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THE LEGISLATION OF THE EMPIRE

1898 TO 1907









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*The Rt. Hon. The Earl of Rosebery, K.G., K.T., D.C.L., LL.D., F.R.S., F.S.A.  
President of the Society of Comparative Legislation.*



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# THE LEGISLATION OF THE EMPIRE

BEING A SURVEY OF THE  
LEGISLATIVE ENACTMENTS OF THE  
BRITISH DOMINIONS  
FROM 1898 TO 1907

*EDITED, UNDER THE DIRECTION OF THE SOCIETY OF  
COMPARATIVE LEGISLATION, BY*

C. E. A. BEDWELL

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WITH A PREFACE BY  
THE RT. HON. THE EARL OF ROSEBERY

K.G., K.T., D.C.L., LL.D., F.R.S.

PRESIDENT OF THE SOCIETY OF COMPARATIVE LEGISLATION

AND AN INTRODUCTION BY  
SIR JOHN MACDONELL, C.B., LL.D.

ONE OF THE MASTERS OF THE SUPREME COURT

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## PREFACE

BY THE EARL OF ROSEBERY, K.G.

THE Society of Comparative Legislation was founded nearly fifteen years ago, with the late Lord Herschell as its first President. The primary object, as defined in the resolution at the inaugural meeting, was "to promote knowledge of the course of legislation in different countries, more particularly in the several parts of Her Majesty's Dominions and in the United States." It was recognised that the Société de Législation Comparée presents in its admirable *Annuaire* a comprehensive survey of the laws of European countries, so that there was no immediate need for further work in that direction, and since the New York State Library publishes an exhaustive bulletin, giving a complete digest of the various Laws of the different States of America, it was unnecessary to review that legislative output so fully as the work of the legislative assemblies throughout the British Dominions. In making the annual reviews the object has been, not merely to compile a dry list or register of enactments, but to bring out the features of novelty, importance, and general interest in each new Law. In order to carry out an undertaking of this comprehensive character, it has been necessary for Sir John Macdonell and Mr. Edward Manson, the Editors of the Society's *Journal*, to enlist the services of a large number of contributors, who have received no payment whatever for this priceless work. In these days of superabundant legislation, it seems marvellous that this work should be left to a private Society. Consider what a work that is.

In the following pages have been brought together only

the reviews of the legislation of the British Empire from 1898 to 1907. For the purpose of this survey alone it has been necessary to examine more than eighteen thousand Acts and Ordinances passed by more than eighty different legislative bodies. A large proportion are trifling amendments of no general interest. Of these the review takes no account, nor does it pretend to include the Acts of a local and private character, so succinctly distinguished by Sir Courtenay Ilbert in his introductory chapter on the English Statute Book from Laws of public general importance. Thus the Society garners up this huge output of Laws which is deemed necessary for the welfare of the British Empire. I venture to say, therefore, that a Society of Comparative Legislation is one of the first necessities to serious people, to all those who want to watch the general course of humanity, and who also want to have an idea of the Laws that are passed with regard to themselves.

In former days I do not think that such a Society was so much required as it is now. We were then living under what I may call the "era of emancipation." The object was to strike off restrictions. We were freeing the Jews, we were freeing the Roman Catholics, we were freeing the Municipalities, we were freeing the Universities. Everywhere our talk was one of enlarging the boundaries of freedom. That task has, in the main, been accomplished, and we have passed, as has often been observed, into an era much more difficult, much more fertile of stumbling-blocks—the era of construction—too often involving the restriction of freedom. The more important portion of the Laws that are passed now are Laws of construction—Laws aimed at moulding human society in a particular and beneficent direction; and I think, if one school had its way, it would aim still more at constructing a new Society on the ruins of the old. But, at any rate, whether we go so far as that or not, we cannot shut out from ourselves the prospect that increasingly the Legislature will endeavour to raise and fortify the new structure of society,



somewhat empirically, by means of legislation. Now, I watch this process with some vigilance and more anxiety, because I belong to that small school which does not believe that Law, in the long run, can greatly ameliorate humanity. I am not sure that I do not incline to that small heresy (if it be a heresy) that the State is most fortunate which achieves its own development by the character and individual efforts of its own citizens, and with as little support and guidance as possible from legislation. At any rate, certain I am that the progress of the State which is enabled so to develop itself will be more sure and more abundant than that of the State which rests on legislative measures for the achievement of its destiny. If, however, we are constantly engaged in the work of construction, it surely is of the most vital importance to us to know what other nations are doing in the same direction, how far they have succeeded by their measures, and how far they have failed. I will take one example—the question of old-age pensions. It is of vast importance to all who have that matter at heart to know what has been done in New Zealand, in Australia, and in Germany. But I am extremely sceptical as to whether many of those who endeavoured to legislate on that subject were fully conversant with the various systems. Take another case. We observe in the course of this work certain tendencies in legislation as characteristic of certain periods—certain subjects on which both our own Empire and other nations seem to be concentrating their attention. For example, Acts and Ordinances respecting the welfare of children—their care in infancy, restrictions upon their employment, the safeguarding of their health by prohibition of smoking, and other means—constantly recur in the ten years under review. It seems as if there were a wave of feeling passing over the world with regard to particular subjects which sweeps legislation along with it. Moreover, with regard to subjects which are not imminent or not critical to us, we have the young Legislatures, particularly in Australia



and New Zealand, proceeding to deal with new topics that some day may also claim our consideration, but as to which it is of the greatest value to know what they are doing, what they are aiming at, and what success they are achieving in these unusual experiments.

By the consolidation of these ten reviews of legislation the value of the work has been enormously increased. Not only is there placed within the reach of all—no library nor Government Office in the Empire can afford to be without it—a guide to the legislation for the whole area, but the main lines of legislation can be traced more completely, and striking evidence is provided of the extent to which the Laws of the various parts provide a real and effective bond of union. It is hoped that the completion of this enterprise, limited in scope as it must necessarily be by the circumstances of the Society, will be sufficient to arouse a wider recognition of its utility, and to secure that it shall no longer be carried out as a private undertaking. In these days, when the State undertakes so much, I venture to think that there are many branches of national expenditure which are not nearly so useful as that involved in the Society of Comparative Legislation. That this is recognised is shown by the fact that some of the Outer Britains—which used to be called the Colonies—are beginning to contribute to our Society, as a recognition of the vast utility of its work. Sympathetic interest and co-operation have been shown in this country, but the increasing demands upon the Government for information about the Laws which are in force in the different parts of the British Dominions, combined with the growing recognition that has been accorded to the Society's work, justify the hope that this publication may be the stepping-stone to a more definite assumption of responsibility in the matter by the State.

ROSEBERY.

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## INTRODUCTION

THE Society of Comparative Legislation has published annually a summary of the legislation of the Empire, prepared by barristers, many of them familiar with the law of the particular Colony which they described, and in not a few instances by Colonial law officers. Ten years ago the hope was expressed in the *Journal* of the Society that a complete index of Imperial legislation might one day be published. It was pointed out that "it is only by means of such an index that the comparative method can be carried out or the inquirer can ascertain, without a disproportionate amount of trouble, how other Legislatures have dealt with any given problem of legislation. At present we have the anomaly of one English-speaking community proposing and adopting enactments in entire ignorance of the fact that similar measures have after trial been abandoned or modified in another. Such an index of Imperial legislation is feasible. It is not necessary that it should be elaborated in the manner of our own Statute Law index—that is to say, the effect of every section epitomised. It would be enough to show that certain topics—shipping, for instance, advertisements, tramways, explosives—have been dealt with and where, leaving the inquirer to go to the measures themselves for details."

A step has been taken towards carrying out this suggestion. In these four volumes are an index and summaries of the chief legislation in all British dominions of each year between 1898 and 1907; summaries of the principal Statutes and Ordinances of all Parliaments and Legislative Assemblies in the Empire; laws made for some four hundred millions of men and women, the largest number of persons living under one political organisation. In the ten years covered by these volumes were passed about 25,000 Statutes and Ordinances. I am unable to state exactly their length. At the lowest computation they cannot be much less than 60,000 pages. We shall not be far wrong if we conceive a statutory output four times the size of the *Encyclopædia Britannica*, the total shelf-space being about thirty-eight feet. The Statute Book of the United Kingdom alone for this period consists of ten volumes of about 2200 pages,

without taking into account the seventy-two volumes of local and personal Acts. Indeed, but for a device which the Parliaments of this country and of the Colonies have resorted to, some of these figures, large though they are, would be swollen. It is customary to take powers for certain departments or local authorities to make rules or by-laws, and in this way the length of many Statutes is greatly reduced.

I am unable to say how much of this vast mass is legislation promoted by private persons. The probability is that it is an insignificant fraction of the whole. In some of the Colonies, *e.g.* Fiji, Bills initiated or promoted by private persons are unknown.

During the period covered by these volumes, some eighty Legislatures have been at work, often by night as well as day, for a large part of the year turning out Statutes with a rapidity never before seen. Nor is there any contraction in the output, nor any sign of it. The number of Statutes passed in the first half of the decade was about 12,000, in the second half about 13,000, the increase being in part attributed to the increase in the number of legislative bodies. There has not been everywhere a continuous growth, as appears by the figures stated at I. 74. There have been fat years and lean. (a) The silence of the Legislature of Cape Colony in the year 1901 is noticeable, the war which then raged being the explanation. Now and then come blanks or times of inactivity. But, on the whole, the growth is not only considerable, but steady.

Some of these figures are only roughly correct. What is a Statute? what an Ordinance? is a question not always easily answered. Much of what is effected in one colony by a Statute may be carried out in another by an Executive Order, which there is a general tendency to substitute for legislation.

It is the duty of every one within a particular community to know the ever-increasing mass of Statute law applicable to it. Only rarely are means taken to make this possible. There is one instance, however, of an attempt to make the law known to those who are bound to obey it. It recalls primitive modes, and, though worthy of imitation, it is, so far as I am aware, unique in modern times. According to the Statute passed by the Nova Scotia Legislature in 1904 to prevent forest fires, "Every person in charge of any drive of timber, survey or exploring party, or of any other party requiring camp-fires for cooking or other purposes, shall provide himself with a copy of this Act, and shall call his men together and cause the Act to be read in their hearing, and explained to them at least once in each week during the continuance of such work or service." (b)

(a) See as to local and private Acts, I. 12.

(b) I. 264.



The survey extends only over ten years. They were eventful years for England and for some of the Colonies. They saw the creation of the Commonwealth of Australia; the constitution of the provinces of Alberta and Saskatchewan in Canada; the fusion of Lagos and Southern Nigeria; the outbreak and close of a great war; the beginning of the reorganisation of South Africa; the introduction of new principles into the Common Law.

The lives of many of the Statutes here summarised have been short. I cannot give exact figures; but I may call attention to the large number of Acts which either repeal or amend others. Obviously, some of them have fallen short of the legislator's aim. Few Statutes go more than five or six years without repair. It may be that this is a characteristic of modern democracy, as it was of ancient. (c) At all events, the survey suggests that rapid legislation means short-lived legislation. At the same time, it is to be observed that amending Acts are often extensions of principles at first tentatively or partly adopted; amendment may mean not confession of failure, but a resolution to persist in and develop a new line of action.

A large portion of the legislation may not be, and indeed never has been, living law; was never carried out, or was applied only feebly and fitfully. But even such laws are facts of importance. In its Statutes each of these communities has been writing its history, recording its faults, wishes, aspirations, hopes, the struggles of classes, the decay of old beliefs, the introduction of new forces. Each pulsation of the life of the community is recorded in the Statute Book. A Statute may be the modern equivalent of a political or social disturbance, and groups of Statutes may stand for what once would have been a revolution.

The history which the various Statute Books summarised in these volumes record seems to be everywhere similar. With much diversity in detail in this mass of legislation, it is surprisingly homogeneous; it has the same aims; it generally adopts the same means. Almost all the Legislatures are making similar experiments, all making similar resolutions. I shall have to point out that the form of legislation is being "standardised." I may add that the same ethical level is being adopted. Thus there is unity in purpose, in spirit and in form. (d) The fact that for many parts of the Empire there is the same Common Law gives the legislation a similar character; much of it is intended to repair defects in that law or to adapt it to modern circumstances; for much of it there is a common background or

(c) "In der vollendeten Demokratie ist dann die Revisionslust in Permanenz." Burckhardt, "Griechische Kulturgeschichte," i. 86.

(d) I hasten to add, not in typographical appearance. See p. xxxv. below.

substratum. There is also much conscious and direct imitation of English models. Many of the Colonial Legislatures keep step, so to speak, with the English Parliament. In these pages will be found abundant confirmation of M. Tarde's theory as to the great influence of imitation in legislation. Any important measure which has been enacted in one part of the Empire is pretty sure to be enacted sooner or later in another. What I do not think M. Tarde notes is the increasing rapidity with which such imitation takes place. Let an important measure be adopted in England; only a few sessions pass, and it is enacted elsewhere. Some Legislatures are peculiarly impressionable; they take up rapidly new ideas, and at once give effect to them by Statutes. Montesquieu said that it was only by "a very great chance that the laws of one community could suit any other."<sup>(e)</sup> This incompatibility does not seem to exist in the case of the communities whose laws are here described.

In the appendix to these volumes is a list of some of the chief English Acts which have been adopted in various parts of the Empire. They range from the Statute of Frauds to the Workmen's Compensation Act, 1906. They include, as might be expected, many Acts relating to mercantile law (*e.g.* the Bills of Exchange Act; <sup>(f)</sup> the Crossed Cheques Act); and Acts relating to Criminal Law, Patents, Company Law, and Bankruptcy. The English Supreme Court practice has been adopted in many parts of the Empire, *e.g.*, in the Australian Commonwealth, British Columbia, New South Wales, Hong Kong, Saskatchewan. The Employers' Liability Act and the Married Women's Property Act have gone throughout the Empire. Sometimes the Colonial legislation adopts an English Act with a modification. Thus some Colonies, while adopting the Married Women's Property Act, alter the common law as to husbands' liability for the torts of their wives.

If legislation be, as is sometimes said, literature in a large sense, it is literature without originality; there is much imitation, extending even to defects. Thus legislation by reference is a device to be frequently found in the Statutes of almost every part of the Empire.

On close inspection, however, the similarity proves to be incomplete. Each community has its own questions, its own answers to them. There is the distinction between legislation for possessions, such as Ashanti or Gambia, mainly inhabited by people semi-civilised, and Colonies inhabited by a population of European descent. In the former we are brought into touch with barbarism; and there are many Acts passed against putting persons or land "in fetish," against

(e) "L'Esprit des Lois," i. 3 (12).

(f) See Chalmers' "Bills of Exchange Act," 7th ed. p. 407.



witchcraft, the use of the ordeal in its various forms, the making and selling of "ju-ju," cannibalism, "human leopard societies," or murder societies. There we see "the conflict between African communism and European individualism," (g) and between the polygamous marriage recognised by native law and the monogamous marriage of Europeans. We are far removed from European legislation in a society in which "for adultery or *witchcraft* on the part of the wife, a man can divorce his wife or claim from her family the *consawment* [the money or token given to it] and other expenses." (h)

There is, of course, a vast difference between the legislation of India and the Eastern Possessions and that of the other parts of the Empire. Then, too, there is a distinction between the Crown Colonies and the self-governing Colonies; the latter move continuously in well-defined grooves, rarely making experiments, at all events none likely to create apprehensions on the part of the Home Authorities. Between the self-governing Colonies themselves there are great differences. In regard to industrial legislation New Zealand stands at one extreme, South Africa at another; the former with much socialist or quasi-socialist legislation, the latter with little or none of that kind. Of certain kinds of legislation there are one or two originating or generating centres. Thus, England has generally given the initiative as to Factory Acts and Statutes relating thereto, while New Zealand and Australia have struck out new lines as to wages, arbitration, boards of conciliation, and the suppression of sweating.

There may one day be a true science of legislation which will enable a student of it to predict accurately the trend and nature of the legislation of any given society. Such a science may show that the history, constitution, and economic circumstances of a community necessitate a course of legislation which can be foreseen. Sociology may teach us that there is an affinity between democratic forms of government and certain kinds of Statutes. There may be discovered a logic of events—what M. Tarde calls "*la logique des sociétés*" (i)—in what appears fortuitous. Montesquieu sought to show, but did not succeed in elucidating, the relation of laws to the Governments which enacted them, or to the "*ordre des choses sur lesquelles elles sont établies*." (k) Some one may be able to extract the "*esprit des lois*,"

(g) Mr. Sarbah's preface to Redwar's "Comments on the Ordinances of the Gold Coast." And see *Journal of Comparative Legislation*, vol. i. p. 379.

(h) Mr. Sarbah's "Fanti Customary Law," p. 44. "Whoever directly or indirectly promotes, encourages, or facilitates the worship or invocation of any fetish which it is pretended or reputed has power to protect persons in the commission of, or guilty of crime," etc., is liable to imprisonment (s. 5 of Ordinance of 1892, No. 11).

(i) "*Transformation du Droit*," p. 189.

(k) 1 C. 3; Barckhausen, p. 227.



about 25,000 in number, in the period dealt with in these volumes. All that is for the future. I do not attempt to note the connection between the history of each Colony and its legislation. Here are indicated only some general heads.

Broadly speaking, the subjects which have chiefly occupied the Legislatures of all parts of the Empire are those relating to the so-called "Condition of England Question"; such subjects as pauperism, poverty, crime, health, the tenure of land, disease, lunacy, drink, wages, education, care of children.

As is pointed out by Lord Rosebery, there are many Statutes curtailing liberty. More and more are required licences or diplomas given or recognised by the State before certain things may be done or certain professions practised. The age of contract seems to be ending; that of status returns. It may be added that many of the restrictions are ancillary to legislation intended to be constructive, or to set up some new standard of conduct. (*l*) It is also to be noted that there are very few Acts affecting fundamental social institutions, such as marriage. There are scarcely any Acts facilitating or extending the right to divorce; in this respect the difference between the Colonial legislation and that of the States of the American Union is notable. The chief exception is the Divorce Act of New Zealand, (*m*) which adds to the number of grounds of divorce and puts both sexes on terms of equality as to this point. I may add that of the very few social experiments referred to in this volume, at least one has failed. Part VII. of the Crown Lands Amendment Act, 1893, of South Australia, established "village settlements," or village settlement associations, to which should be made leases, during the continuance of which no villager should have any "separate interest or property, other than the right of possession and user of the part allotted to him" (s. 68). The rules of the association "may require payment to a common fund, or otherwise as may be determined, of all or any part of the earnings of the villagers, whether earned within the village or elsewhere" (s. 78). The Settlers Act of 1901 repeals Part VII. of the Act of 1893, (*n*) which established village settlements upon a communistic basis, and, in the words of the summary of legislation, "provides for effecting a change on an individualistic basis."

Three classes of persons in particular have been throughout the whole Empire the subject of legislative supervision—the publican,

(*l*) "Ce qui constitue la liberté, c'est la subordination des forces extérieures aux forces sociales. . . . Elle ne peut donc se réaliser que progressivement, à mesure que l'homme s'élève au dessus des choses pour leur faire la loi. . . . La tâche des sociétés les plus avancées est donc, peut on dire, un œuvre de justice." Durkheim. *La Division du Travail Social*, p. 381.

(*m*) II. 289.

(*n*) II. 20, 28.

the betting agent, and the money-lender. As to all three, stringent legislation has been passed. Of these, probably the publican has received most attention. Scarcely a Colony has omitted to deal with some aspect of the sale of alcohol; and, with few exceptions, the legislation is drastic. It is also generally similar. The liquor trade is treated as a more or less dangerous trade. Most of the Acts contain provisions for the protection of children against the dangers and temptations connected with public-houses. The English Act of 1901 (*o*) makes it an offence to sell liquor to a child under fourteen. According to the Alberta Act (*p*) no one under twenty-one may linger about a bar-room. Both the English and the Scottish Acts, and particularly the latter, contain strict provisions against bogus Clubs. (*q*) In the Alberta Act (*r*) are provisions intended to prevent the publican keeping a mere drinking shop. It is enacted that every licensed hotel shall have so many bedrooms in addition to those required for the use of the publican, his family and servants; in cities, at least forty-five bedrooms; in towns, thirty; in villages, twenty.

Next to drinking, the evil which has most exercised the minds of legislators is betting. It is the subject of many Statutes, all of which follow more or less closely the lines of the English Acts. All the Acts impose heavy penalties on betting in streets or public places. (*s*) All of them restrict betting advertisements; *e.g.* the Jersey Act (*t*) prohibits the announcement either in the public press or by other means directly or indirectly that bets are made, proposed, or accepted in the island or elsewhere. (*u*)

The money-lender has also engaged the attention of the Legislatures. The Imperial Act of 1900 (*x*) requires the registration of money-lenders, and makes their contracts liable to be varied. This principle is followed in other Acts. One Statute (the Canadian Act) fixes the maximum interest at 12 per cent. (*y*) Any money-lender violating the Act is liable to imprisonment for a year. (*z*)

A marked difference will be noted between the English and the Indian Acts relating to money-lending. The Indian money-lender finds his customers among the peasants. "The English Act endeavours to define the class of money-lenders to whom it is intended to apply, requires them under penalties to register themselves as money-lenders, and then proceeds to put their transactions under the control of the Courts. The Indian Act deals with the question by defining and

(*o*) I. 85.(*p*) I. 195.(*q*) I. 112.(*r*) I. 195.(*s*) I. 130.(*t*) I. 164.(*u*) *See also* the Guernsey Act, I. 167.(*x*) I. 63.(*y*) I. 187.(*z*) *See also* the South Australian Act, II. 34.



slightly extending the provisions of the Contract Act as to undue influence and liquidated damages, and then adds certain illustrations founded on money-lending transactions.” (a)

Prominent among the subjects dealt with is Immigration. Under that head and the head of “aliens” falls a large mass of Statutes; for everywhere immigration is a matter of concern, though not always from the same motives. Almost all the Colonies are adopting measures for the exclusion of criminals, paupers, lunatics, and sufferers from disease. To keep the stock pure and healthy; to prevent the introduction of persons who may become criminals or paupers, or be otherwise chargeable to the public; to prevent the introduction and permanent settlement of a large number of Chinese and Asiatics, is the aim of the many statutes restricting immigration. This legislation is passed in virtue of the principle that “one of the rights possessed by the supreme power in every State is the right to refuse to permit an alien to enter that State, and to annex what conditions it pleases to the permission to enter it, and to expel or deport home from the State at pleasure.” (b)

Most of the recent Acts are modelled upon the Natal Immigration Restriction Act of 1897 (No. 1 of 1897), of which Mr. Chamberlain, at the Conference of 1897, expressed his approval. It defines six classes of “prohibited immigrants,” among them those who cannot comply with the shibboleth of civilisation, *i.e.* write out and sign in the character of any European language an application for exemption. I may refer, as an example, to the Immigration Restriction Act, 1901 (s. 3), of the Commonwealth of Australia, which applies to any person who cannot pass the declaration test; any person likely to become a charge on the public; any idiot or insane person; any person suffering from an infectious or contagious disease of a troublesome or dangerous character; convicted criminals sentenced to imprisonment for a year or more, whose sentences are yet unexpired, and who are yet unpardoned. (c) The aim of other Immigration Acts, or sections of the same Acts, is to protect labourers and coolies who are imported against certain abuses, particularly as to their wages; to secure to

(a) III. 5, 10. According to the Bengal Tenancy Act, 1885, no contract entered into subsequent to it for more than 12 per cent. per annum is valid. There is also the restriction imposed by the Rule of Damdupat under Hindu law, which forbids the accumulation of interest in excess of the principal (Ghose’s “Law of Mortgage,” p. 589). See as to the Rule of Damdupat article by Mr. Vicajee (*Journal*, II. (N.S.) p. 464). For a study of the differences between the laws on this subject in the United Kingdom, India, and the Colonies, see Bellot, “Bargains with Money-Lenders,” 2nd ed.

(b) Griffith, C.J., in *Ah Yin v. Christie*, 4 Commonwealth Law Reports, at p. 1431. See also *Musgrove v. Chun Teeong Toy*, [1891] A. C. 272.

(c) Isaacs, J., in *Ah Yin v. Christie*, p. 1437.

them payment in coin, (*d*) and to regulate emigration agents. (*e*) One feature of some of the Immigration Acts is to be noted. There has grown up a policy of securing the repatriation of coolies, Polynesians, and others who come to work in our Colonies or Possessions; a policy embodied in such Statutes as the India Act of 1898. (*f*)

A very large number of Acts relate to the administration of justice. I have in my mind the Statutes, which are numerous, relating to evidence, arbitration, appeals, extension of jurisdiction of inferior Courts. Not a few of them relate to evidence. A new departure was made by the Statute which enabled a prisoner on his trial to be a competent witness for the defence at every stage of the proceedings. (*g*) This innovation has been followed elsewhere—in fact, by the majority of our Colonies possessing English systems of criminal law. The Criminal Appeal Act (*h*) established for England an Appeal to a Court of not fewer than three judges in criminal cases tried at Assizes and Quarter Sessions. With the complex system established by this Statute may be compared the simple appellate system in Sierra Leone, (*i*) according to which every district commissioner is to send to the Chief Justice every month a complete list of convictions with particulars. The list is to operate as an appeal on behalf of persons whose names appear in the list; and the Chief Justice may, “without hearing argument,” reverse or amend any judgment given contrary to law. (*k*) With the elaborate system of justice administered in England and most of our Colonies may be compared the rough, ready, and primitive methods adopted in the Hazara district in India. (*l*) The rule for decision is to be custom, provided it is reasonable and equitable, and where no custom exists, justice, equity, and good conscience. The Regulations for the new North-West Frontier Province (*m*) carry one back to primitive times. They give jurisdiction to councils of elders. They authorise the blockade of hostile or unfriendly tribes, with seizure and detention of unruly members, the imposition of fines on communities which are accessory to crimes or within whose lands they were committed. Altogether, “there is a fine wild frontier flavour about these provisions.”

I may mention that several of the Colonies have sought to codify their criminal law, and that in this respect they have already outstripped the Mother Country. One of the chief measures of codification is the Queensland Criminal Code, founded on a draft code prepared by Griffiths, C.J. (*n*) A curious provision in the recent

(*d*) See India Act, III. 124, 277.

(*f*) III. 326.

(*h*) I. 144.

(*l*) III. 60.

(*i*) III. 249.

(*m*) III. 62.

(*e*) III. 295, 309, 320, 360, 414.

(*g*) I. 17.

(*k*) III. 249.

(*n*) I. 501.



legislation of Alberta may be noted: "the wearing or use of the customary wigs is hereby prohibited in any Court in this province." (*o*)

The volume of legislation in regard to crime is large, and everywhere it flows in much the same direction. All over the Empire crime is being combatted with the same weapons and agencies; not by increasing punishment, but by indirect means—by the services of the probation officer; by separating habitual offenders from first or casual; by the segregation of the young. Everywhere, too, the tendency is towards leniency and to diminishing the use of severe or degrading punishments. Everywhere the criminal is being given a chance. Everywhere a distinction is drawn between the habitual and casual offender. Of our Colonies, as well as of home, it may be said that this is the children's century. Certainly a large number of Acts have been passed for the protection of children, not merely Acts giving further effect to the policy of the Factory Acts and restricting child labour, but also Statutes recognising the existence of a class of children who are wards of the State. As examples of such Acts may be mentioned the Children's Protection Act of British Columbia, (*p*) which makes provision for the inspection of children in temporary or foster-homes, and which affirms the principle that these are children of the State. In fact, they are so designated by the State Children Act of Victoria. (*q*)

Several of the Acts contain provisions with which we are familiar, prohibiting the sale of tobacco to youths or children. For example, by the British Columbia Act, tobacco must not be sold to youths under sixteen, nor used in the public streets by them. The Curfew Act of British Columbia (*r*) makes it unlawful for a child (or any one under fourteen) to be in the streets after nine p.m. without lawful excuse, or unless accompanied by its parents or guardians, or unless the child is engaged in industrial occupation. A similar law exists in Ontario (Ontario Revised Statutes, 1897, c. 259). S. 21 empowers municipal councils in cities, towns, or incorporated villages to pass bylaws on this subject. The council "shall cause a bell or bells to be rung, at or near the time appointed, as a warning, to be called the Curfew Bell, after which the children so required to be in their homes or off the streets shall not be upon the public streets except under proper control or guardianship, or for some unavoidable cause." (*s*)

As an example of the Australian legislation in favour of children may be cited the State Children Act of Victoria. (*t*) There would

(*o*) I. 226.

(*p*) I. 213.

(*q*) II. 12.

(*r*) I. 231.

(*s*) See "Laws affecting Children, compiled from the Dominion and Ontario Statutes," by J. J. Kelso.

(*t*) II. 12.

seem to be a distinction between the Canadian and Australian legislation as to this; the former—with Ontario leading the way under the guidance of Mr. Kelso, the superintendent of neglected or destitute children—insisting with special emphasis on the value of influences of family life.

A large part of the legislation of the decade in every part of the Empire relates to health in its many aspects; sanitary regulations for the home, the parish, the city; measures to secure wholesome food; to check the spread of infectious diseases or epidemics; to give pure air and open spaces; to provide hospitals and sanatoriums; to combat malaria and other tropical diseases; to forbid the sale of poisons and deleterious drugs; to give holidays and hours of leisure to workers. *Sanitas, omnia sanitas*, is the purport of a vast mass of legislation.

Everywhere is the same policy pursued as to inebriates, who, by a large number of Acts, are treated as irresponsible and incapable of self-control. Most of them proceed on the lines of the Imperial Acts, of which the first was passed in 1879. (*u*)

A large number of Acts have been passed in the Colonies as to defence and the reorganisation of Colonial forces, Volunteers, and others. (*x*) In fact, in almost every Colony there has been legislation on the subject. Usually the Colonial Statute makes obligatory the service of persons between certain ages in case of war. Thus the Act of the Australian Commonwealth of 1903 (*y*) declares the liability to obligatory service in the Militia in time of war of all British subjects (*z*) between certain ages who have lived six months in the Colony. The Canadian Act of 1904, (*a*) s. 10, states that "all the male inhabitants of Canada, of the age of eighteen years and upwards and under sixty, shall be liable to service in the Militia; provided that the Governor-General may require all the male inhabitants of Canada capable of bearing arms to serve, in the case of a *levée en masse*." According to the Antigua Act, the Government may call out all the male inhabitants over eighteen and under forty-five, if the defence force fall below the official minimum. (*b*) According to the Jersey Act, (*c*) every male "inhabitant," as defined by the Act, from sixteen to forty-five is liable to service in the Militia. (*d*) The Ceylon Act of 1898 (*e*) contains a remarkable provision; a sum equivalent to 9½ per cent. of the annual colonial revenues is appropriated yearly for the defence of the island.

Next to the Statutes relating to drink came in point of number

(*u*) 42 & 43 Vict. c. 19.

(*x*) See as to military service in the Colonies, *Journal of Comparative Legislation*, II. (N.S.) 440.

(*y*) I. 422.

(*z*) I. 423.

(*a*) Militia Act, 4 Ed. VII. c. 23.

(*b*) III. 352.

(*c*) I. 163.

(*d*) I. 163.

(*e*) III. 67.



those relating to education. Most of this legislation relates to primary education. But much also is of a novel kind, relating as it does to agricultural education. There are few Statutes as to University education, and almost as few as to secondary. In some of the education Acts there is no trace of any religious difficulty. As an example of how it is solved when it exists, I may refer to the law passed in the Orange River Colony and Ceylon, 1907. (*f*)

It is needless to say that Labour Legislation is largely represented both here and in the Colonies—not in all of them, for there is a conspicuous absence of such legislation in South Africa—and particularly in Australasia. (*g*) Such legislation falls into five groups: (1) statutes relating to the sanitary condition of factories and workshops; (2) direct prohibition of the employment of certain workers, *e.g.* of children; (3) the protection of wages; (4) the settlement of disputes; (5) the fixing of wages and hours. (*h*) There are examples of all five groups, though of course some Statutes unite two or more of these subjects. It is difficult to say of any one Colony that it is more advanced than all the others. But as to one matter, the most advanced point of factory and workshop legislation is reached in the legislation of South Australia, (*i*) which reduces the number of persons employed necessary to constitute a factory from six to one. (*k*) The factory legislation of Australia and New Zealand permits children only at fourteen to begin work; the minimum age under English legislation is twelve (s. 62 of the Factory Acts, 1901 and 1907). A group of Acts to be found in Australasia is intended to give effect, in the settlement of industrial disputes, to “compulsory arbitration and conciliation.” This kind of legislation began in Victoria in 1890. The original intention was to form wages boards and to suppress sweating, which policy developed into “Compulsory Arbitration and Conciliation.” Adopted by New Zealand in 1893, the principle of compulsion was extended to New South Wales, Western Australia, and in 1908 to Queensland. The New South Wales Act (1901), for example, provides that the Arbitration Court may declare that any term of agreement or condition shall be a common rule of an industry, fix the limits of the operation of the rule, and impose penalties for its breach. In 1904 the Commonwealth Parliament passed an Act on the lines of the New South Wales, New Zealand and Western Australia Act, with a view to the settlement of disputes extending beyond the

(*f*) II. 403.

(*g*) “The labour laws of New Zealand include fifty-six separate Statutes, and form a volume of 428 pages.” See “Labour Movement in Australasia,” by Victor S. Clark, p. 109.

(*h*) M. Pic, “La Protection Légale des Travailleurs,” p. 7.

(*i*) II. 13.

(*k*) II. 44.

limit of any one State. The summary of it at I. 426 shows its importance. (*l*)

The Canadian Parliament has passed an Act(*m*) for the prevention and settlement of trade disputes. Unlike the New Zealand Act, it contains no provision for compulsory arbitration. On the application of either party, the Minister of Works may appoint a "conciliator"; on the application of both parties an arbitrator. The Canadian Dominion Parliament has also established a Board of Conciliation and Investigation. (*n*) No less important is the Act for the preservation of Australian Industries(*o*) and the prevention of monopolies or "dumping."

The student of Comparative Legislation is familiar with primitive criminal laws directed not against men, but animals and even inanimate objects which have caused death or injury to human beings. He is also familiar with magical or ceremonial imprecations uttered against pests and plagues, such as rats and mice. There is apparent continuity and development in the somewhat long list of Statutes directed against noxious weeds, such as "Barbary shrubs," and against noxious animals, such as wolves, wild dogs, rabbits, rats, and insect pests.

I have noted only a very small number of Acts or sections which have an æsthetic bearing. Among them are those relating to control of advertisements. The principle of the Imperial Statute of 1907, empowering local authorities to regulate advertisements, has been adopted in several Colonies. (*p*) Among such measures is the Act passed in Tasmania, (*q*) which prohibits all painting or delineation upon any rock, tree, or other thing in a public place, the property of the Crown or a municipality. It also gives the Governor in Council power to proclaim (subject to certain reservations) any tract of land or pleasure resort, or any road and tourist road, and make it an offence to mark in any such road or resort any rock or tree, or disfigure any grass or shrubs.

Certain Acts deal with the regulation of dramatic performances. Thus, the Canadian Dominion Act of 1903, (*r*) makes any lessee or manager of a theatre who presents an immoral, indecent, or obscene play, etc., liable to a year's imprisonment. An actor taking any part

(*l*) These laws, "it is said, form, in conjunction with those protecting native industries, a system which claims to provide for every industry a living profit and every workman a living wage." (See Australian correspondent of the *Times*, April 24, 1909.) See as to scope of Commonwealth Act, the decision of the High Court in *Jumbunna Coal Mine v. Victorian Coal Miners' Association*, [1908] 6 C. L. R. 309.

(*m*) I. 174.

(*n*) I. 189.

(*o*) I. 433.

(*p*) II. 88, 260.

(*q*) II. 57.

(*r*) I. 179.



in the performance of such a piece is liable to three months' imprisonment. Under the Ontario Municipal Act of 1901 (s) and bylaws made under the Act, it is lawful (in addition to any other penalty) to "authorize the chief of police, the deputy chief of police, or any officer specially detailed for that purpose, upon the written instructions of the chairman of the board of police commissioners, to enter any theatre, hall, or other place of public amusement or entertainment, and if at the request of such chief of police, deputy chief of police, or other officer so detailed as aforesaid, such immoral or indecent play, sketch or performance is not forthwith stopped, to apprehend the performer or performers without warrant, and carry him, her, or them as soon as practicable before a Justice of the Peace."

Something may be said as to the form of this large volume of legislation. In August, 1895, Lord Herschell, the President of the Society, in a letter to Mr. Chamberlain, then Secretary of State for the Colonies, inclosed a series of questions as to (*inter alia*) the methods of legislation, the publication, revision or consolidation of statute law and matters connected therewith. The answers were published in the *Journal* (t) of the Society. They revealed great diversity in practice. In many of the Colonies there were no official draftsmen. With certain remarkable exceptions, each Colony followed its own methods. Little was done to secure uniformity of language. Of late years there has been an assimilation to a common standard. There are two types of modern Statutes. The first may be called the French type, with its absence of details, its broad statement of general principles, which judges must fill in. There is also the English type, with its minute divisions and subdivisions, its copious details, its attempt to circumscribe discretion. In the main, the legislation of the Empire tends to approximate to English models. If there is a difference in the Colonial Statutes, it is that there is greater profusion of details and more reluctance to entrust discretion to Courts. (u) The draftsman seems determined to provide for every possible circumstance or combination of circumstances that may arise in the administration of the Act. Therein, perhaps, may be found one of the chief characteristics of the legislation of the younger communities. They show a remarkable faith in the power of legislation

(s) I. 280.

(t) *Journal of Comparative Legislation*, I. 134, 358; II. 258; II. (N.S.) 86, 284, 506.

(u) Perhaps this is a characteristic of democratic legislation. "Now it is most desirable that well-drawn laws should, as far as possible, define everything themselves, leaving as few points as possible to the discretion of the Judge. On all other points (than those relative to special cases) the Judges ought to be given as little discretionary power as possible." Aristotle's "Rhetoric," I. 17.

to foresee what is best, to discipline men and to inculcate the practice of humane and moral principles. Perhaps, too, they show in the directness of their methods and disregard of tradition that worship of "visible value" which Mr. Bagehot noted as a characteristic of colonial legislation.

Mr. Bedwell, writing with experience as a librarian, remarks with respect to the form of colonial Statutes:—"The heterogeneous collection as it stands on the shelves is the despair of the librarian. Efforts to secure some uniformity in size (*x*) have not been wholly unsuccessful, but it not infrequently happens that the laws of the session of the Legislative Assembly of a Crown Colony are printed upon paper of one size at the beginning and upon another before its termination. The paper may also be of different qualities and colours. Such a thing as two varieties in the volumes of a consolidated edition of the Statutes is not unknown, though in recent years recourse has been had more often to English publishers, who can overcome vicissitudes such as a failure in the supply of paper." (*y*)

The Society of Comparative Legislation has already done something to put an end to these needless differences. In another decade it is to be hoped that they will have disappeared.

JOHN MACDONELL.

(*x*)  $10 \times 6\frac{1}{2}$  is the size suggested by the Colonial Office.

(*y*) Some of the Colonies have published "Revised Statutes," *e.g.* Canada (1905) in three volumes, and Victoria in seven volumes. Of the latter Revised Statutes, notes upon decisions have, at the suggestion of the Council of Judges, been made a feature.



# LEGISLATION OF THE EMPIRE.

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## BRITISH ISLES.

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## THE ENGLISH STATUTE BOOK. (a)

WHAT is the English Statute Book? What are its contents? Where are they to be found? How are they arranged? What facilities are there for ascertaining the enactments which have been made on a given subject, and the extent to which they are in force? The object of this introductory section is to supply an answer to these questions.

**Meaning of "Statute."**—The word "Statute" is in ordinary English usage treated as equivalent to Act of Parliament, and the English Statute Book might therefore be expected to include all Acts passed by the Parliament of England, or, since the union with Scotland and Ireland respectively, by the Parliament of the United Kingdom. But the Statute Book includes certain enactments which are not, in the strictest sense, Acts of Parliament, and excludes certain enactments which are. When Parliament was first taking shape as a legislative body, laws were made, not by the King, Lords, and Commons in Parliament assembled, but by the king, with the counsel and assent of the great men of the realm; and the legislation of the reign of Henry III., and most of that of Edward I., was the work of assemblies to which the Commons were not summoned. The line between Royal Ordinances and Acts of Parliament is not easy to draw in the first stages of Parliamentary legislation, and some of the most important among the early enactments in the English Statute Book, including the Statute "*Quia Emptores*," would not comply with the tests applied to a modern Act of Parliament. On

(a) Being chapter ii. of "*Legislative Methods and Forms*," by Sir Courtenay Ilbert, kindly brought up to date by the author.



the other hand, the ordinary editions of the "Statutes at large" (b) exclude numerous Acts of Parliament as being either local or private. The line between general and local, public and private, Acts has been drawn variously at different times, and will be referred to hereafter. For the present, the Statute Book will be treated as including only the public general Statutes.

**Statutes of the Realm.**—The first edition of the English Statutes which was at once authoritative and collective was that commonly known as the "Statutes of the Realm." The Parliament of 1800 (the Parliament which passed the Act of Union with Ireland) devoted much attention to the condition of the public records, and a Select Committee of the House of Commons presented a report on this subject on July 4, 1800. One of the conclusions arrived at in this report was that it was highly expedient for the honour of the nation and the benefit of all His Majesty's subjects that a complete and authoritative edition of all the Statutes should be published. The report of the committee was followed by an address to the Crown, which led to the appointment of the first Record Commissioners. The Commissioners at their first sitting resolved, "That a complete and authentic collection of the Statutes of the Realm be prepared, including every law, as well those repealed or expired as those now in force, with a chronological list of them, and tables of their principal matters." This resolution led to the preparation of the edition entitled, "Statutes of the Realm, printed by command of His Majesty King George III., in pursuance of an address from the House of Commons of Great Britain, from original records and authentic manuscripts." This edition is in nine folio volumes, of which the first was published in 1810, and the last in 1822, and contains the Statutes from Henry III.'s Provisions of Merton (1235-36) to the last year of the reign of Queen Anne (1713). Prefixed to these Statutes, in the first volume, are prints of certain "charters of liberties," including Magna Charta, and an elaborate introduction, which, though superseded on some points by later researches, contains a large amount of interesting and valuable information on the history and condition of the English Statute Law. The introduction gives an account of the former printed collections, translations, and abridgments of the Statutes, and describes the various plans which had been proposed for an authentic publication or for a revision of the Statutes. Then, after a reference to the Charters, it describes the matters inserted in the collection of the Statutes, their arrangement, the sources from which they were taken, and the methods adopted in searching for, transcribing, collating, noting, and printing the text of the Statutes. The editors found much difficulty in determining

(b) This phrase appears to occur first in one of the Elizabethan editions of the Statutes, that by Barker.

what ought to be considered as Statutes ; and the conclusion at which they ultimately arrived was to include in their edition "all such instruments as have been inserted in any general collection of Statutes printed previously to the edition by Hawkins" (published 1735), "with the addition only of such matters of a public nature, purporting to be Statutes, as were first introduced by him or by subsequent editors, and of such other new matters of the like nature as could be taken from sources of authority not to be controverted—namely, Statute Rolls, Inrollments of Acts, Exemplifications, Transcripts by Writ, and original Acts." Hence the first volume contains not only Royal enactments which are not, strictly speaking, Acts of Parliament, but sundry documents, of which both the authenticity and the claim to be considered as enactments at all are open to much doubt.<sup>(c)</sup> The Acts down to 1489, when the old practice of making up the Statute Roll ceased, are printed in double columns, one column containing the original Latin or Norman-French, the other the English translation, except that for the session of 1488–89 <sup>(d)</sup> both columns are in English, one printed from the Parliamentary Roll, the other from a different version contained in a book formerly kept in the Court of Exchequer at Westminster. The edition was supplemented by two index volumes. The first of these, which was published in 1824, and was called an alphabetical index, contains an alphabetical list of the subjects dealt with by the Statutes comprised in the nine volumes, giving, in connection with each subject, a short reference to the enactments dealing with it. The other, which was published in 1828, though called a chronological index, also proceeds on the basis of an alphabetical list of subjects, but gives under each subject-heading a list in chronological order of the enactments relating to it. It is really an expanded version of the alphabetical index.

**Scottish Statutes.**—In pursuance of a resolution passed by the Record Commission in 1807, a folio edition of the Scottish Statutes was prepared on lines resembling the English edition of the "Statutes of the Realm." In order to give further time for consideration of the difficulties connected with the earlier Statutes, it was arranged that the first volume should be postponed. Accordingly, vols. 2 to 11, containing the Statutes from 1424 to 1707, the date of the union with England, were brought out in the years 1814 to 1824, whilst the first volume, containing documents of earlier date, did not appear until 1844.

**Irish Statutes.**—The Record Commission did not bring out any

(c) See, *e.g.*, the remarks on the so-called Statute "De Officio Coronatoris," 4 Edw. I., in Pollock and Maitland, Book II., chap. ix., par. 4; and Gross, "Introduction to Select Coroners' Rolls" (Selden Society), p. 25.

(d) 4 Hen. VII.



edition of the Irish Statutes, but an edition of them in twenty folio volumes had been previously printed by the King's Printer-General in Ireland, in pursuance of an order made by Lord Halifax in 1762, when he was Lord-Lieutenant of Ireland.

**Editions of Statutes at Large for Period since 1713.**—For the period since the reign of Queen Anne no collective edition of the English Statutes, containing repealed as well as unrepealed matter, has been published by authority. Of the editions brought out by private enterprise in the eighteenth century, the most important were those by Serjeant Hawkins (1734–35) and by Mr. Ruffhead (1762–64). These editions were regularly continued by subsequent volumes, and as they were printed from the King's Printers' copies of the Statutes their contents for the period since 1707 may be relied on as accurate; but they omit Statutes which are treated as of minor or transitory importance. Queen's Printers' copies of the nineteenth-century Statutes have been published in many forms, and an octavo edition of the Acts of each session is now published by the Stationery Office within a reasonable time after the end of the session.

**Statutes Revised (First Edition).**—The object of the Statute Law Revision Acts which have been passed from 1861 onwards has been to purge away dead matter from the Statute Book, and thus to facilitate the preparation of an edition of the Statutes which should contain only such Acts as are in force. After three of these Acts had been passed, Lord Chancellor Cairns, in 1868, took active steps for the preparation of such an edition by the appointment of a Statute Law Committee to superintend the execution of the work. The result was the first revised edition of the Statutes, the first volume of which appeared in 1870, and which was carried in a series of eighteen quarto volumes down to the end of 1878.

**Statutes Revised (Second Edition).**—A second edition of the Revised Statutes was begun in 1886, and was carried, in sixteen octavo volumes, down to the end of that year. This edition is handier in form and cheaper than its predecessor, (*e*) embodies the effect of later Revision Acts, and contains in each volume not only a chronological list of the Acts passed in the period covered by the volume, showing how far they have been repealed, but also a full index to the enactments printed in the volume.

**Utility of Statutes Revised.** (*f*)—As the utility of these revised editions has been questioned, it may be worth while to illustrate by a

(*e*) The price of each volume is 7s. 6d.

(*f*) The passing of the Statute Law Revision Act, 1908, has now enabled the edition to be supplemented by four volumes, carrying it down to the end of the nineteenth century and of Queen Victoria's reign. These volumes are now (1909) in course of preparation, and will be published at an early date.



few figures the amount of cost and labour which they save. The first edition of the Revised Statutes substituted eighteen volumes for one hundred and eighteen. (*g*) The new edition contains, in five volumes, the enactments down to the beginning of the reign of Queen Victoria, which occupied seventy-seven volumes of the Statutes at large. There are, indeed, two classes of persons whose needs the revised edition will not fully meet, and, it may be added, was not specially designed to meet. The judge who has to decide, the counsel who has to advise on the construction of an obscure enactment, frequently finds it necessary to refer to the language of Acts, sections, or words which have been repealed, either as dead law, by Statute Law Revision Acts, or as superseded law, by amending or consolidating Acts. To the historical student the law of the past is even more important than the law of the present. Both these classes of persons require an edition of the Statutes containing everything that has been repealed, either by way of Statute Law revision or otherwise. But both these classes may derive material assistance from the notes and tables in the revised edition, which show the reasons for each repeal or omission. And to the ordinary legislator, official, lawyer, or member of the public, it is surely an immense advantage to have an edition of the Statutes which contains only living law, which is comprised within a reasonable compass, and which may be purchased for a reasonable price.

**Irish Statutes Revised.**—A revised edition of the Ante-Union Irish Statutes, from 1710 to 1800, comprised in a single quarto volume, corresponding in form to the first revised edition of the English Statutes, was brought out under the authority of the Irish Government in 1888.

**Scottish Statutes Revised.**—A revised edition of the Ante-Union Scottish Statutes, prepared in pursuance of the recommendation of the Statute Law Committee, was published in 1908. Its publication had been made possible by the passing of the Statute Law Revision (Scotland) Act, 1906, (*h*) which cleared away a great number of obsolete enactments.

**Annual Volumes of Public General Statutes.**—The year 1886 was selected as the termination of the period for the Revised Statutes, because the existing edition of the Annual Statutes begins with the following year. Down to the year 1887 the Annual Statutes were printed and published in different forms and at different prices. But, as from the beginning of 1887, one authoritative edition only of the

(*g*) "After omission of repealed and expired Statutes to a vast amount, the present price of the last edition of the Statutes exceeds the average income of any individual of the labouring classes in England" (Bentham, "Works," by Bowring, vol. iii. p. 239).

(*h*) 6 Ed. VII. c. 33.

Statutes is published annually, (i) in an octavo volume, at a cheaper price than formerly, and is edited by an officer paid by the Treasury. Each volume contains an index to the public general Acts of the session to which it relates, and five tables—namely—

(1) A table of the titles of the public general Acts passed during the session, arranged in the order in which they were passed;

(2) and (3) Two tables of the titles of the local and private Acts (including the public Acts of a local character), passed during the session (i.) arranged according to chapter, (ii.) arranged alphabetically;

(4) A table showing the effect of the year's legislation on public general Acts; and

(5) A table of the local and private Acts arranged in classes.

**Classification of Statutes.**—The system of classification on which these tables are based dates from the year 1868. Under this system the Acts of each session are classified in three groups, each separately numbered—

(1) Public General Acts.

(2) Local Acts.

(3) Private Acts.

The three groups are distinguished by different modes of numbering. Public general Acts have their chapters in Arabic characters (62 & 63 Vict. c. 10); local Acts in small Roman numerals (62 & 63 Vict. c. x.); private Acts (if printed) in italicised Arabic figures (62 & 63 Vict. c. 10). The local Acts of each session, including those which, though passed as public Acts, are treated as local, and on that ground excluded from the category of public general Acts, are printed sessionally in separate volumes. Owing to their bulk and number, the local Acts of each session cannot usually be included in a single volume. Private Acts are not always printed; but a list of those passed in each session will be found in the "Table of the Local and Private Acts arranged in Classes," under the heading "Personal Affairs."

**Public and Private Acts : Distinction.**—The term "Private Act" in its narrowest sense means an Act belonging to the third of the groups mentioned above. Acts of this class are passed for purely personal objects, such as the extension of powers to deal with land subject to a particular settlement, and each of them contains a provision that it is not to be deemed public. They are now few in number, the necessity for most of them having been superseded by general legislation, such as that which has extended the powers of tenants for life to deal with land. In ordinary usage, however, the term "Private Act" is often employed in a wider sense, as including all measures introduced as private Bills.

(i) The price of each volume of the Annual Statutes in the edition published by authority is three shillings. The Statutes published by the Council of Law Reporting are also printed in the same form by the Stationery Office.



The former distinction merely affects the mode of promulgation and the arrangement of the contents of the Statute Book. A public Bill when passed may eventually be promulgated and printed as a local Act. But the distinction between public and private Bills is, as will be seen hereafter, much more important.

Every local Act is a public general Act. Before 1851 an enactment to this effect was contained in each local Act; but these special enactments were superseded in 1851 by a provision in Lord Brougham's Act, (*j*) which is now embodied in the Interpretation Act, 1889. (*k*) Before 1798 the only distinction in the Statute Book was between public and private Acts. The latter class included not only Acts of a personal character, such as estate Acts, divorce Acts, and naturalisation Acts, but also certain Acts which would be now treated as local—*e.g.* drainage Acts and inclosure Acts. But the great majority of the Acts now classed as local were then included among the public Acts. From 1798 to 1868 the Acts printed in the Statute Book were divided into public general Acts and local and personal Acts, according as they originated as public or private Bills. But since 1868 Acts which originate as public Bills, but are of a local character, are not promulgated as public Acts, and are printed among the local Acts. (*l*)

**Public and Private Bills: Distinction.**—The distinction between public and private Bills is, as has been said, much more important. A private Bill is a measure for the interest of some person or class of persons, whether an individual, a corporation, or the inhabitants of a county, town, parish, or other locality, and originates on the petition of the person or persons interested.

A public Bill is introduced as a measure of public policy in which the whole community is interested, and is presented by, or originates on the motion of, some member of the House in which the Bill is produced.

The object of a private Bill is, in fact, to obtain a privilege, (*m*)—that is to say, an exception from the general law, or a provision for something which cannot be obtained by means of the general law, whether that general law is contained in a Statute or is Common Law.

Private and public Bills differ not merely in the mode of origination,

(*j*) 13 & 14 Vict. c. 21.

(*k*) 52 & 53 Vict. c. 63, s. 9.

(*l*) In the legislation of the various parts of the British Dominions, the distinction between public, local and personal, and private is less clearly defined even than in the Acts of the United Kingdom. In some instances there is a division into the different classes which has been noted in the survey. But the line is generally drawn in an apparently arbitrary manner, and in the case of the Crown Colonies no attempt is made to separate one class from the other.

(*m*) As to the origin and early history of private Bills, see the interesting evidence given by Sir Francis Palgrave before the Select Committee on Public Petitions in 1832 ("H. C. Papers," 1833, vol. xii. p. 171).



but in the mode of procedure for passing them. In the case of a private Bill the rules of the Standing Orders of the two Houses as to the giving of certain notices and the deposit of Bills before a certain date must be complied with, in order that all persons may have notice if their private interests are affected. Each Bill is considered by a Select Committee of each House, who hear the promoters and opponents by counsel, consider their private interests, and determine, in a quasi-judicial capacity, whether the promoters of the Bill have justified their request for a privilege, and whether private interests are properly protected.

The officers of the House and the different Government departments watch private Bills from the point of view of the public interest, and call the attention of the Select Committee to matters affecting that interest. The House of Commons also appoint annually a special committee, now called the Local Legislation Committee, on police and sanitary regulation Bills for the purpose of guarding against the insertion in private Bills of enactments inconsistent with the general law.

Subject to these provisions for the protection of public interests, the proceedings on a private Bill resemble more closely private litigation between the parties interested than a discussion on questions of public policy, though as each Bill has to go through the same stages in the whole House as a public Bill, there is an opportunity for members to raise at those stages questions of public policy in respect of the Bill.

Public Bills are considered mainly from the side of public policy. But when a public Bill affects private interests in such a manner that if it were a private Bill the Standing Orders would require notices to be given, it is called a hybrid Bill, and the practice is to refer the Bill to the examiners of Standing Orders like a private Bill, and to make the Bill proceed in nearly the same way as if it were a private Bill. For instance, it is considered by a Select Committee in a quasi-judicial capacity, and counsel are heard for and against it. Bills relating to Crown property must, if promoted by the Crown, be dealt with in this way, because the Crown cannot petition Parliament.

The boundary line between public Bills and private Bills, and between the private interests which require a public Bill to be treated as a hybrid Bill and those which do not, is very narrow, and has fluctuated from time to time. Bills relating to particular localities only are, as a rule, treated as private Bills. But a Sunday Closing Bill for Wales and another for Cornwall were held to be rightly introduced as public Bills. Measures relating to the whole of London are frequently, perhaps usually, dealt with as public Bills, "the large area, the number of parishes, the vast population, and the variety of interests concerned constituting them measures of public policy rather than of local

interest.” (*n*) But the practice has not been uniform. The Metropolis Management Act, 1855, (*nn*) which was a public Act, gave certain powers to the Metropolitan Board of Works to borrow money. Other powers of borrowing money were given to that Board, partly by public Acts, like the Thames Embankment Act, 1862, (*o*) partly by local Acts, dealing with local improvements. In 1869 a general Act regulated the Board’s power of borrowing, and from that date till 1888 their powers of borrowing were given annually by a public Act. In 1889 the Standing Orders were altered, and the London County Council now have an annual Bill enabling them to borrow money.

In most towns the buildings and streets are regulated partly by local Acts and partly by the Public Health Acts. In London they have been regulated partly by local Acts—*e.g.* the Acts relating to the city, or Michaelangelo Taylor’s Act. (*oo*). But in 1844, and subsequently, they have been regulated by public Acts. In the session of 1894 a measure for consolidating the building law in London outside the city was introduced and passed as a private Bill, which became law as the London Building Act, 1894. (*p*)

The Thames Conservancy was constituted partly by local Acts, partly by public Acts. In 1894 a Bill repealing all these Acts and reconstituting the Conservancy was passed as a private Bill, and became a local Act. (*q*) But the Port of London Act of 1908, (*qq*) repealing a large portion of the Act of 1894, was passed as a public Bill.

The general rule that where legislation deals with one particular locality only it ought to proceed by way of private Bill, is based on the view that the locality is entitled to be heard quasi-judicially on the provisions of the enactment. For this reason it is unusual to insert in a public Bill a clause dealing with a particular locality. Where, however, special provision for a particular locality has to be made, the rule is sometimes evaded by not naming the locality, but so stating the circumstances that the provision can only apply to the particular locality in question.

In some cases private Bills have been defeated by a resolution of the House that they ought to be dealt with as public Bills. Instances are supplied by the Manchester Education Bill, 1854, the Liverpool Licensing Bill, 1865, and the Keble College Bill, 1888. The Presbyterian Church of Ireland Bill, 1871, was introduced as a private Bill, but was withdrawn in consequence of an objection that the matter ought to be dealt with by public legislation; and a public Bill, which became law as the Irish Presbyterian Church Act, 1871, (*r*) took its place.

(*n*) May’s “Parliamentary Practice,” 11th ed., p. 673.

(*nn*) 18 & 19 Vict. c. 120.

(*o*) 25 & 26 Vict. c. 93.

(*oo*) 50 Geo. III. c. lxxv.

(*p*) 57 & 58 Vict. c. cexiii.

(*q*) 57 & 58 Vict. c. clxxxvii.

(*qq*) 8 Edw. VII. c. 68.

(*r*) 34 & 35 Vict. c. 24.



A consideration of the different precedents and varying practice shows that the boundary line between public and private Bills depends not merely on whether the Bill comes within the Standing Orders relating to private Bills, or does or does not affect a particular locality only, but also on questions of policy, on the circumstances and political questions of the time, and on the general character of the Bill. On the one hand, it would not be right that a measure required by the general public interest on general grounds of public policy should not be passed merely because it is objected to by particular persons or localities whom it would affect. On the other hand, it would not be right that a particular person or locality should be allowed to obtain any privilege inconsistent with what is considered at the time to be true public policy. In some cases it may be convenient that a municipality should be authorised by private Bill to try a particular experiment which is not inconsistent with general public policy. If the experiment is successful, it may be afterwards adopted as a matter of general legislation. Again, there may be cases where the general law will not meet the circumstances of a particular locality. Thus, a law suitable to the great majority of towns may be found inapplicable to the large populations of such places as Liverpool or Glasgow.

It seems therefore impossible to lay down a hard-and-fast rule as to the subjects which should and which should not be dealt with by private Bills. Certain principles should be observed, such as that a private Bill should not, except for very strong reasons, deal with certain subjects, including the public revenue, the administration of justice, or the constitution or election of local governing bodies. But the boundary line will vary, and ought to vary, from time to time. Circumstances and the requirements of localities change. Old needs pass away and new needs arise. If experiments by private Bills had not been allowed some of our public legislation would not have taken place. Of course these experiments ought to be carefully watched, and it is desirable to have some special machinery, such as the Local Legislation Committee now appointed annually by the House of Commons, for the purpose of determining the cases in which they should be allowed.

As has been said above, experiments in private legislation have often led to public legislation. A good instance is supplied by the Public Health Acts Amendment Act, 1890, (s) which enables any sanitary authority to adopt various enactments which had been frequently embodied in measures introduced as private Bills.

A very large number of matters which used to be dealt with by private legislation can now be dealt with under the general law. Thus,

(s) 53 & 54 Vict. c. 59.



the Divorce and Naturalisation Acts, which were so common in the eighteenth century, are now superseded in most cases by general enactments. Most of the Estate Acts have been made unnecessary by such Acts as the Settled Land Acts, 1882 to 1890. Amendments of the general company law have removed the necessity for much special legislation about companies, and many matters for which private Bills were formerly required can now be dealt with by the machinery of Provisional Orders.

**Provisional Orders' Confirmation Bills.**—The Bills to confirm the numerous Provisional Orders now made, under statutory authority, by the Local Government Board, the Board of Trade, and other Government departments, are introduced as public Bills by the Minister in charge of the department which made the order, are referred to the examiners for consideration, and if any of the orders scheduled for confirmation is opposed, it is treated as a private Bill for the purpose of investigation in committee. (*t*)

**Public Acts of a Local Character.**—Acts to confirm Provisional Orders, and other Acts which, though introduced as public Bills, are considered to be of a local character, are, as a rule, included in the group of Local Acts, but distinguished by having the letter "P" prefixed to their number in the group. To this class belong the Acts which, before the passing of the Act of 1905, (*u*) were occasionally passed to remove doubts as to the validity of marriages celebrated in particular places of worship.

**Chronological Table and Index of Acts.**—A chronological table and index of the Statutes is published annually under the direction of the Statute Law Committee. In its latest form this work consists of two volumes, which are arranged for combined use. The first volume contains a chronological table of all the Statutes, showing total or partial repeals; the second contains an index to the subject-matter of the Statutes in force. The chronological table is based on the edition of the Record Commission, known as the "Statutes of the Realm," as far as that edition extends—namely, to the end of the reign of Queen Anne (1713). Thenceforward it follows Ruffhead's edition (by Serjeant Runninton, 1786) so far as it extends—namely, to the end of the session 25 Geo. III., 1785. From that date, it is believed, all editions are alike. The following extract from the preface to the twenty-third edition shows the principle on which particular classes of Statutes have been included in or excluded from the chronological table:—

(*t*) Standing Orders, House of Commons, 151, 208A, Clifford, vol. i. p. 270. May (11th edit.), ch. xxx. and pp. 757, 758, 821.

(*u*) 5 Edw. VII. c. 23.

"The chronological table covers the whole period between the passing of the earliest Statute of the Parliament of England (1235) and the end of the fifth session of the Twenty-sixth Parliament of the United Kingdom of Great Britain and Ireland—namely, the session 7 Edw. VII. (1907). Ante-Union Acts of the Parliaments of Scotland and Ireland are not comprised in the table. Acts of the Parliament of England extended to Ireland by Poynings' Act, 10 Hen. VII. c. 22 (I), are, in relation to Ireland, treated as Ante-Union Acts of the Parliaments of Ireland, with the exception that the repeals of such enactments by the Statute Law Revision (Ireland) Act, 1872, are noted.

"The chronological table comprises all Acts printed in the "Statutes of the Realm," and after the end of that edition all Acts printed by the King's or Queen's Printers or as Public General.

"Many of these Acts, however, cannot be regarded as public Acts, affecting the community generally, being in their nature special or private Acts, relating to particular persons or places or to private concerns. Acts of this kind are distinguished by the italic entries *Local, Personal, Private*, in the second column of the table (except in a few cases in which they are shown to be not in force); and the table does not profess to show repeals affecting these Acts. Further means of reference to the provisions of these Acts is afforded by the Indexes to Local and Personal Acts prepared by direction of the Statute Law Committee, which covers the period 1801 to 1899, and by the Classified Lists of Local Acts annexed to the annual volumes of the Statutes for 1900 to 1907. The second column of the Chronological Table gives, as regards all Acts of a public nature, wholly or partly in force, the titles of subject-matters under which they are to be found in the 'Index to the Statutes in Force'; and as regards Acts spent or repealed, gives in italic type either the short title of the repealed Act or a general indication of its subject-matter."

The index is framed in accordance with instructions prepared by the late Lord Thring in 1876. It is followed by a series of appendixes containing references to various Acts, mainly of a local character, which were printed among the public or public general Acts, but which, for various reasons, it has been considered undesirable to index in detail.

**Lists of Local and Private Acts.**—Local and private Acts have not been indexed in the same manner or to the same extent as public general Acts. Until 1798 local Acts were not numbered or printed separately from general Acts. It is estimated that the number of Acts of a local, personal, or private character passed before the last century was upwards of 11,000, and that upwards of 21,000 Acts of a similar character were passed during the nineteenth century. In 1867 an index, or rather a classified list, of Statutes passed between 1801 and 1865, was published by order of the House of Lords, but is now out of print. It was divided into two parts, the first containing public general Acts, and the second local and private Acts. The second

part was supplemented by additional volumes published in 1878 and 1890. But this index has now been superseded by a classified list of all the local and private Acts (including Provisional Orders confirmed by Local Acts) from 1801 to 1899, which was prepared under the direction of the Statute Law Committee, and was published in 1900. Another index will shortly appear, dealing on the same lines with all the local and private Acts of earlier date than 1801.



## I. UNITED KINGDOM. (a)

**1898** Acts passed—Public General, 62; Local, 262; Private, 3.

**Army.**—Under the Reserve Forces Act, 1882, (b) the Army Reserve cannot be called out on permanent service except by proclamation made in case of imminent national danger or great emergency. If Parliament is then sitting there must be a previous communication to Parliament, and if it is not it must be summoned to meet within ten days. The Reserve Forces and Militia Act (No. 9, B.E.) (c) enables a man of the First-class Army Reserve, if he so agrees in writing, to be called out on permanent service during his first twelve months of service in the Reserve without compliance with the requirements of the Act of 1882. But this power is subject to several restrictions. The number of the men liable to be called out under it is not to exceed five thousand at any one time. The power is not to be exercised except when the men are required for service outside the United Kingdom when warlike operations are in preparation or in progress. The men called out are not to be liable to serve for more than twelve months. An agreement to incur the liability may be revoked by three months' notice in writing. Any exercise of the power is to be reported to Parliament as soon as may be.

Under the Militia Act, 1882, (d) no part of the Militia is to be carried or ordered to go out of the United Kingdom, except that if any part of the Militia make a voluntary offer to serve in the Channel Islands, or at Malta, or Gibraltar, the offer may be accepted. But even in that case a person may not be compelled to make an offer, or be engaged so to serve, except by his own consent. S. 2 of the Reserve Forces and Militia Act extends this power of making offers of voluntary service to any place outside the United Kingdom, and authorises the employment of any member of the Militia volunteering to serve for a period, not exceeding one year, whether an order

(a) Contributed by Sir Courtenay Ilbert, K.C.S.I.

(b) 45 & 46 Vict. c. 48.

(c) The letters B.E., U.K., E., S., and I., signify application to the British Empire, the United Kingdom of Great Britain and Ireland, England (including Wales by virtue of the Wales and Berwick Act, 1746), Scotland, and Ireland respectively; Statutes applying to Scotland or Ireland only will be found at the end of the summary of each year.

(d) 45 & 46 Vict. c. 49.

embodying the Militia is in force or not at the time. But the Act retains in force the provision which requires the consent of each individual to service outside the United Kingdom.

**Church.**—The Act of Henry VIII., which first authorised the appointment of suffragan bishops, is so framed as to prevent a person who is already a bishop from being appointed a suffragan bishop under it. The Suffragan Bishops Act (No. 11, E.) amends the Act of Henry VIII., in such a way as to enable a retired Colonial bishop to become a suffragan bishop in England.

The Benefices Act (No. 48, E.) gives effect to some of the recommendations made by the Report of the Royal Commission on Church Patronage in 1879, and to some of the proposals embodied in Bills which have been many years before Parliament. S. 1, which is directed against simony, requires, subject to certain exceptions, every transfer of a right of patronage to a benefice to be registered in the diocesan registry ; prohibits, in effect, though not in express terms, the sale of next presentations ; and invalidates a sale of a right of patronage made within twelve months after the last institution or admission to the benefice. It also prohibits, under penalties, the sale by public auction of any right of patronage, except in the case of an advowson sold in conjunction with a manor, or with an estate in land of not less than a hundred acres situate in the parish in which the benefice is situate, or in an adjoining parish, belonging to the same manor as the advowson. It further invalidates certain agreements of a simoniacal nature, substitutes a more stringent and specific declaration for the declaration against simony required by the Clerical Subscription Act, 1865,<sup>(e)</sup> and makes simoniacal transactions offences capable of being dealt with under the Clergy Discipline Act, 1892<sup>(ee)</sup>.

Under the previous law a bishop could refuse to institute a presentee for want of " idoneity " or fitness. But there was always some doubt as to what want of fitness would include ; and, as refusal to institute might involve expensive proceedings at law, it was a power which the bishop naturally was unwilling to exercise. S. 2, whilst not derogating from any existing power, enables a bishop to refuse institution—

(a) if, at the date of the vacancy, not more than one year has elapsed since the transfer of the right of patronage, unless it is proved that the transfer was not effected in view of the probability of a vacancy within the year ; and

(b) on the ground that at the date of presentation not more than three years had elapsed since the presentee was ordained deacon, or that the presentee is unfit for the discharge of the duties of the benefice by reason of physical or mental infirmity

(e) 23 & 29 Vict. c. 122.

(ee) 55 & 56 Vict. c. 32.



or incapacity, pecuniary embarrassment of a serious character, grave misconduct or neglect of duty in an ecclesiastical office, evil life, having by his conduct caused grave scandal concerning his moral character since his ordination, or having with reference to presentation been knowingly party or privy to any transaction or agreement which is invalid under the Act—*i.e.* as being simoniacal.

Then comes a provision which is apparently intended to give an opportunity to the parishioners for expressing their opinion. A bishop is not to institute or collate until the expiration of one month after the notice that he proposes to do so has been served on the churchwardens of the parish, who are to publish the notice in the manner prescribed by rules. An appeal against the refusal of a bishop to institute is given to a court consisting of the archbishop of the province and a judge of the Supreme Court nominated by the Lord Chancellor. The judge is to decide all questions of law, and his finding on any question of fact as to an alleged reason of unfitness or disqualification is to be binding on the archbishop. In cases where this appeal lies against any refusal, no proceeding in the nature of *quare impedit* or *duplex querela* is to be taken in respect of the refusal. But this particular form of appeal does not lie where the refusal is based on the ground of doctrine or ritual or want of title in the patron.

Other provisions of the Act (ss. 8, 9) strengthen the lay element in the commissions of inquiry which can be held under the Pluralities Acts, and enable the bishop to inhibit an incumbent if he is reported by such a commission to be negligent in the performance of his duties, and to appoint a curate to perform his duties. But any such inhibition is subject to appeal to the court which hears appeals against refusals to institute.

Under s. 10 a benefice is to become void in certain cases of sequestration against the incumbent for non-payment of his debts.

S. 12 converts into presentative benefices all benefices which at the passing of the Act were donative, *i.e.* in which the cure of souls could be given to an incumbent without the intervention of the bishop. There were only about a hundred benefices of this class, but it was found that their existence facilitated simoniacal transactions.

The Act also widens the powers of the Universities of Oxford and Cambridge in respect of presentation to benefices.

**Civil Procedure.**—The Special Juries Act (No. 6, E.) removed the limit of forty-eight on the number of persons who may be summoned to the assizes as special jurors.

**Companies.**—S. 25 of the Companies Act, 1867, (*f*) which enacts  
(*f*) 30 & 31 Vict. c. 131.



that every share in a company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing and filed with the Registrar of Joint Stock Companies at or before the issue of the share, has, as is well known, given rise to much litigation and many difficulties in practice. The Companies Act (No. 26, U.K.) enables the court to grant relief in proper cases for non-compliance with these provisions by making an order for the filing with the registrar of a sufficient contract in writing, and directing that on the contract being filed within the proper time it shall have effect as if it had been filed before the issue of the shares to which it relates.

**Crime.**—The Vagrancy Act (No. 39, E.) (*g*) punishes *souteneurs* and persons trading in prostitution, by making them liable to be dealt with as rogues and vagabonds within the meaning of the Vagrancy Act, 1824. (*h*)

**Criminal Procedure.** (*i*)—The Bail Act (No. 7, E.) facilitates the grant of bail by enabling it to be granted without the requirement to find sureties.

**Customs.**—The Revenue Act (No. 46, U.K.), which makes miscellaneous amendments in the revenue law, includes among the articles of which the importation is prohibited fictitious stamps and advertisements of foreign lotteries.

**Education.**—The Elementary School Teachers (Superannuation) Act (No. 57, E.) establishes a scheme for retiring pensions for certificated teachers in elementary schools. Each teacher is, during his term of service, to contribute to the defrayed annuity fund constituted under the Act at the rate, if a man, of £3, and if a woman, of £2, a year. The Treasury may increase this rate. On attaining sixty-five, the teacher becomes entitled to a life annuity at a rate fixed by tables under the Act. If he has duly contributed to the fund and complied with certain other requirements of the Act, the Treasury may grant to him out of money provided by Parliament, by way of addition to his deferred annuity, an annual superannuation allowance calculated at the rate of ten shillings for each complete year of recorded service. Provision is also made for the grant of disablement allowances to incapacitated teachers.

**Evidence.**—The Criminal Evidence Act (No. 36, E.S.) makes a change in the law which had been the subject of legislative proposals in Parliament during almost every year since 1884, and gives a general application to provisions to the same effect which had been introduced

(*g*) See *infra*, p. 100, as to Scotland.

(*h*) 5 Geo. IV. c. 83.

(*i*) The Criminal Evidence Act is noted under the head of *Evidence*.

into numerous Acts relating to special classes of offences. It enacts that every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person. But this enactment is qualified by several provisos. The person charged must not be called as a witness except on his own application. The failure of the person charged, or of his or her wife or husband, to give evidence is not to be made the subject of comment by the prosecution. The wife or husband is not, subject to certain exceptions, to be called except on the application of the person charged. Husband and wife are not to be compelled to disclose marital communications. The person charged, if called as a witness, may be asked a question in cross-examination, notwithstanding that it may tend to criminate him in respect of the offence with which he is charged, but is not to be asked, and if asked is not to be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that with which he is then charged, or is a bad character, except in three cases:—

- (i.) “where the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or
- (ii.) “where he has personally or by his advocate asked questions of the witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or where the nature or conduct of the offence is such as to involve imputation on the character of the prosecutor or the witnesses for the prosecution; or
- (iii.) “where he has given evidence against any other person charged with the same offence.”

A person charged is, in the absence of a special order to the contrary, to give his evidence from the witness-box, and not from the dock. The right of the prisoner under certain enactments to make an unsworn statement is preserved. There are provisions as to the time at which the person charged is to be called as a witness, and as to the right of reply. There are also provisions for calling the husband or wife in certain cases without the consent of the person charged. The Act is not to apply to proceedings in courts-martial under the Naval Discipline Act, 1866, (*j*) or the Army Act, 1881, (*jj*) unless applied to them by general orders or rules. Rules have since been made to that effect. (*k*)

(*j*) 29 & 30 Vict. c. 109.

(*jj*) 44 & 45 Vict. c. 58.

(*k*) See “Statutory Rules and Orders Revised,” 1904, vol. i., “Army,” p. 23, “King’s Regulations and Admiralty Instructions,” 1906, s. 677.



**Finance.**—The Greek Loan Act (No. 4, U.K.) enabled the Government of the United Kingdom to join with the Governments of France and Russia in guaranteeing a loan to be raised by the Government of Greece.

The Finance Act (No. 10, U.K.), *i.e.* the Budget Act of the year, reduced the tobacco duties, carried the partial relief from income tax up to incomes of £700, and exempted from land tax all owners exempted from income tax on the ground of their income not exceeding £160.

The Revenue Act (No. 46, U.K.) prohibited the importation of fictitious postage stamps and foreign lottery advertisements, gave the Commissioners of Customs power to require an account of diamonds imported, invalidated any claim for brokerage in case of a contract note not being sent by a broker to his principal, and added to the list of exemptions from stamp duty or receipt any receipts given by county court officers or clerks to justices.

**Highways.**—The Locomotives Act (No. 29, E.) regulates the use on highways of heavy locomotives, as distinguished from the light locomotives or motor cars which were regulated by the Locomotive on Highways Act, 1896. (*kk*) It extends the powers of county and borough councils to regulate the weight carried in waggons drawn or propelled by locomotives, and enables those councils to make bylaws prohibiting or restricting or regulating the use of locomotives on particular highways and bridges. All locomotives must be licensed by the county council, except agricultural locomotives and steam-rollers, which need only be registered. If a licensed locomotive is used in a county in which it is not licensed, a fee of 2s. 6d. a day must be paid to the council of the county during use. The Act requires the weight, unloaded, of each waggon drawn by a locomotive to be conspicuously and legibly affixed thereon, and limits the number of waggons to be attached to a locomotive. It regulates the persons to accompany and the lights to be carried by locomotives on highways. Expenses in relation to the damages caused by extraordinary traffic are to be recovered either in the County Court or in the High Court, instead of before justices.

**Inebriates.**—Under s. 1 of the Inebriates Act (No. 60, U.K.), where a (*l*) person is convicted on indictment of an offence punishable with

(*kk*) 59 & 60 Vict. c. 36.

(*l*) See *infra*, p. 32, and as to Scotland, p. 72. In 1908 the Home Secretary appointed a Departmental Committee "to inquire into the operation of the law relating to inebriates and to their detention in reformatories and retreats, and to report what amendments in the law and its administration are desirable." The committee reported that there has been a decided failure to apply the Act of 1898, as widely as was intended by the legislature, and make a number of suggestions for its amendment, with a view to rendering it more effective. (Report Cd. 4438 and Minutes of Evidence Cd. 4439.) The



imprisonment or penal servitude, if the court is satisfied from the evidence that the offence was committed under the influence of drink, or that drunkenness was a contributing cause of the offence, and the offender admits that he is, or is found by the jury to be, an habitual drunkard, the court may, in addition to or in substitution for any other sentence, order that he may be detained for not more than three years in an inebriate reformatory.

Under s. 2 of the same Act, any person who commits any of certain offences specified in the schedule, being offences in which drunkenness is an element, and who within the twelve months preceding the date of the commission of the offence has been convicted summarily at least three times of any of the offences so specified, and who is an habitual drunkard, is to be liable on conviction or indictment, or on summary conviction, if he consents to be dealt with summarily, to be detained for a term not exceeding three years in an inebriate reformatory.

Power is given for the Secretary of State to establish inebriate reformatories and to certify inebriate reformatories established by a county or borough council or by any other persons, and to make regulations for their management. County or borough councils are expressly empowered to contribute towards the expenses of inebriate reformatories.

The Act makes some miscellaneous amendments of the Habitual Drunkards Act, 1879, (*ll*) and the Inebriates Act, 1888, (*m*) and, among other things, transfers to county and borough councils the power of licensing retreats for inebriates.

**Marriage.**—Under the law as it stood before 1898, a marriage in England was not valid unless solemnised in the presence either of a clergyman of the Established Church or of a marriage registrar, the only exception allowed being in the case of Jews and Quakers. The requirement of the attendance of a registrar at marriages solemnised in Nonconformist places of worship was a grievance to Nonconformists, and the object of the Marriage Act (No. 58, E.) was to remove this grievance. It enables marriages to be lawfully solemnised in buildings registered for the purpose without the presence of a registrar, but in the presence of a “duly authorised person,” who is responsible for seeing that the proper declarations are made, and that the entries required for registration purposes are duly made and signed. The authorised person must be certified as having been duly authorised for the purpose by the trustees or other governing body of the registered

committee confined their inquiry to England and Wales. Another committee is now (1909) considering the operation of the Act in Scotland.

(*ll*) 42 & 43 Vict. c. 19.

(*m*) 51 & 52 Vict. c. 19.

building; and this expression is declared by the Act to include, in the case of Roman Catholic registered buildings, the bishop or vicar-general of the diocese.

**Merchant Shipping.**—The Merchant Shipping (Liability of Ship-owners) Act (No. 14, U.K.) extends the statutory limitation of a ship-owner's liability for damage caused by his ship to a period of not more than three months between launching and registration. Under the previous law the limitation was confined to the period after registration.

The Mercantile Marine Fund, as constituted by the Merchant Shipping Act, 1894, (*n*) and previous Acts, was fed from various sources, of which by far the most important were light dues, and was applied to various purposes mostly connected with shipping. The shipping interests complained that the result of this arrangement was to charge the light dues with expenses with which they were not properly chargeable, and consequently to raise their amount. The Mercantile Marine Fund Act (No. 44, U.K.) abolishes the Mercantile Marine Fund; constitutes a new general lighthouse fund, to which all light dues are to be carried, and which is to be applicable to lighthouse purposes only; charges on the votes all other expenses previously defrayed out of the Mercantile Marine Fund; and carries to the Exchequer the receipts, other than light dues, previously carried to that fund. It also makes some financial adjustments with respect to lighthouses previously paid for out of votes. In order to recoup the Exchequer to some extent for the additional burden thrown on the votes by this arrangement, the Act enables fees to be charged in respect of the registration, transfer, and mortgage of British ships, and increases the power of recovering expenses incurred on account of distressed seamen. The Act also alters the principle on which light dues are levied by charging them with respect to the voyage and not with respect to the lights which a ship passes or from which it is supposed to derive benefit. A schedule fixes the scale of dues for each voyage with respect to different classes of ships; but tugs and pleasure yachts are to make annual payments instead of payments for the voyage. There are exceptions for fishing boats and certain other classes of vessels. S. 6 of the Act is intended to encourage the Royal Naval Reserve by authorising allowances to be made to shipowners in respect to British-born sailors employed by them and enrolled in the Reserve.

**Poor.**—The Poor Law Unions Association (Expenses) Act (No. 19, E.) enables the guardians of any poor law union to make contributions out of their common fund to the Association of Poor Law Unions in England and Wales, thus extending the provisions of the Poor Law Conferences Act, 1883, (*nn*) and following the provisions

(*n*) 57 & 58 Vict. c. 60.

(*nn*) 46 Vict. c. 11.



which had been subsequently enacted with respect to county councils, district councils, and school boards.

**Post Office.**—The Post Office Guarantee (No. 2) Act (No. 59, E.) enables borough and urban district councils to guarantee postal and telegraphic facilities.

**Prisons.**—The Prison Act (No. 41, E.) amalgamates the Prison Commissioners and the Directors of Convict Prisons. When English prisons were under the control of local authorities, uniformity of treatment of prisoners was to some extent secured by the rules scheduled to the Prison Act, 1865. (*o*) Since the management of prisons has been centralised by the operation of the Prison Act, 1877, (*oo*) these rules have been found to impede reform by unduly stereotyping practice. S. 2 of the Act enables the Secretary of State to make prison rules for the government both of local prisons and of convict prisons, and these rules, when made, are to take the place of the regulations scheduled to the Prison Act, 1865. A draft of any rules proposed to be made under this provision must be laid before Parliament.

The Act also enables boards of visitors, like the visiting committees of local prisons, to be appointed for convict prisons, and directs that the mode in which sentences of penal servitude or imprisonment with or without hard labour are to be carried out in prisons may be regulated by prison rules, and that in making these rules regard is to be had to the sex, age, health, industry, and conduct of the prisoners.

S. 5 imposes serious restrictions on the power to inflict corporal punishment for prison offences. Prison rules are not to authorise the infliction of corporal punishment—

- (a) except in the case of a prisoner under sentence of penal servitude, or convicted of felony, or sentenced to hard labour; nor
- (b) except for mutiny or incitement to mutiny or gross personal violence to an officer or servant of the prison; nor
- (c) except by order of the board of visitors or visiting committee of the prison, after inquiry on oath held by them at a meeting specially summoned for the purpose, and consisting of not less than three persons, of whom two must be justices; but a metropolitan police or stipendiary magistrate may be substituted by the Secretary of State for the board or committee.

The order of the board or committee is not to be carried into effect until it has been confirmed by the Secretary of State, who must also be supplied with a copy of the case, the evidence, and a report of the sentence, and of the grounds on which it was passed. These provisions practically abolish corporal punishment in prisons, except in very grave cases.



Under the Prison Act, 1865, s. 67, misdemeanants not sentenced to hard labour were to be divided into two divisions. Under s. 6 of the Act of 1898 prisoners not sentenced to penal servitude or hard labour are to be divided into three divisions, so as to admit of further graduation. Persons imprisoned for default in payment of a debt are to be placed in a separate division and treated under special prison rules. They are not to be placed in association with criminal prisoners, nor to be compelled to wear prison dress, unless their own clothing is unfit for use.

Provision is to be made by prison rules for enabling a prisoner to earn by special industry or good conduct a remission of a portion of his imprisonment (s. 8).

A person imprisoned for non-payment of a fine may obtain release by paying a part of his fine bearing proportion to the rest of his term of sentence (s. 9). (*p*)

The powers of enabling a person to be produced for the purpose of evidence or otherwise in the interests of justice are extended (s. 11).

**Public Health.**—The Vaccination Act (No. 49, E.) (*pp*) was based to some extent on the recommendation of a Royal Commission which was appointed in 1889, and finally reported in 1896. It extends the period for compulsory vaccination to six months from birth instead of three months, thus following the Scottish law; abolishes the requirement to take a child to a station for vaccination by a public vaccinator; and requires public vaccinators to attend children at their own homes, as they do in Scotland, and offer to vaccinate with glycerinated calf-lymph, or such other lymph as may be issued by the Local Government Board, instead of by means of arm-to-arm vaccination.

S. 2 of the Act, which was introduced on the "report" stage, and has been the subject of much comment, recognises the conscientious objector by enacting that "no parent or other person shall be liable to any penalty under s. 29 or s. 31 of the Vaccination Act of 1867, (*q*) if within four months from the birth of the child he satisfies two justices or a stipendiary or metropolitan police magistrate, in petty sessions, that he conscientiously believes that vaccination would be prejudicial to the health of the child, and within seven days thereafter delivers to the vaccination officer for the district a certificate by such justices or magistrate of such conscientious objection."

The Act also contains provisions against repeated penalties, and requires persons committed to prison on account of non-compliance with any order or non-payment of fines or costs under the Vaccination Acts to be treated in the same way as first-class misdemeanants.

(*p*) See *infra*, p. 42, as to Scotland and Ireland.

(*pp*) See *infra*, p. 157.

(*q*) 30 & 31 Vict. c. 84.

**Public Libraries.**—The Libraries Offences Act (No. 53, E.) imposes specific penalties upon any person who in any public library or reading-room, to the annoyance or disturbance of any person using the same, behaves in a disorderly manner, uses violent, abusive, or obscene language, bets or gambles, or after proper warning persists in remaining beyond the hours fixed for closing. These offences had previously been dealt with only by bylaws, which had been found insufficient.

**Statute Law Revision.**—The Statute Law Revision Act (No. 22, U.K.) continues the clearance of the Statute Book, and clears off a good many temporary Acts and other spent and superseded provisions.

**Universities.**—The Universities and College Estates Act (No. 55, U.K.) enlarges the powers of sale and leasing exercisable by universities and colleges with respect to their lands, the range of purposes to which capital money derived from the sale of land may be applied, and the class of purposes for which loans may be raised. It places universities and colleges in these respects in a somewhat similar position to a tenant for life under the Settled Estates Acts.

The University of London Act (No. 62, E.) appoints a body of statutory commissioners with power to frame statutes and regulations for the purpose of giving effect, subject to the modifications indicated in the schedule to the Act, to the recommendations made by the commissioners appointed to consider the draft charter of the proposed Gresham University in London. The main object of the Act is to provide for the London University being organised as a teaching as well as an examining university.

**Ireland.**—The Local Government (Ireland) Act (No. 37, I.) is an extremely elaborate enactment which abolishes the system of government by grand jury in Ireland, establishes elective county councils and district councils (but not parish councils) in Ireland, and applies to them, with the necessary modifications, the provisions of the English Local Government Acts of 1888 (*qq*) and 1894. (*r*)

The Pauper Children (Ireland) Act (No. 30, I.) enables boards of guardians in Ireland to provide for the relief of children outside workhouses by placing them out at nurse or boarding them out. It also enables boards of guardians to send workhouse children to national and certified schools, and prohibits the employment of pauper children under twelve years of age.

**Scotland.**—The Vexatious Actions (Scotland) Act (No. 35, S.) practically extends to Scotland the provisions of the Vexatious Actions Act, 1896. (*rr*) The Poor Law (Scotland) Act (No. 21, S.) reduces for Scotland the period of residence required for settlement from five years to three years, enables the Local Government Board for Scotland to

(*qq*) 51 & 52 Vict. c. 41.

(*r*) 57 & 58 Vict. c. 58.

(*rr*) 59 & 60 Vict. c. 51.



determine disputed cases of settlement, and provides for the cases of removal of paupers to England or Ireland.

The Act to amend the law in regard to the tenure of office of sheriffs in Scotland (No. 8, S.) (s) enables the Secretary for Scotland to order the removal of a sheriff on a report declaring that he is, by reason of inability or misbehaviour, unfit for his office; but the order must lie before Parliament for four consecutive weeks, and during that time may be annulled by resolution of either House.

The Trusts (Scotland) Act (No. 42, S.) enables trustees in Scotland to invest in the securities of local authorities.

**1899** (ss) Acts passed—Public General, 54; Local, 277; Private, 3.

Out of more than three hundred public Bills submitted to Parliament in the two Sessions of 1899, only fifty-four received the Royal assent—fifty-one in the first session and three in the second. They comprised new departures in the law of London government and London water supply, besides a Sale of Food and Drugs Act, three Education Acts, a Tithe Rent-Charge Rating Act, a Small Dwellings Acquisition Act, a Seats for Shop Assistants Act, a Summary Jurisdiction Act, and a Commons Regulation Act. Subjoined is an account of the more important of them, supplying, where necessary, the information which the Legislature gives by reference only to previous Statutes, frequently, as in the case of the London Government Act, themselves incorporating other Statutes in their turn:—

**Army.**—The Army (Annual) Act (No. 3, U.K.) continued for one year the elaborate Army Act which has since 1881 superseded the annual Mutiny Acts, declaring, as did those Acts, that a Standing Army is contrary to law and also that it is adjudged necessary that a body of forces should be continued for the safety of the United Kingdom; and the defence of the possessions of her Majesty's Crown, and that their number should be 184,153, exclusive of the Indian Army.

The Reserve Forces Act (No. 40, B.E.) provides that where a soldier entitled to be transferred to the reserve is serving out of the United Kingdom, he may at his own request be transferred to the reserve without being required to return to the United Kingdom, but subject to such conditions as to residence, liability to be called out for annual training, or on permanent service, or in aid of the civil power, or as to any other matters, as may be prescribed by regulations under

(s) Repealed by 7 Edw. VII. c. 51.

(ss) This summary of the principal public Acts of 1899 is founded upon the Introduction, by the late Mr. J. M. Lely, to the continuation Volume for 1899 of Chitty's "Statutes of Practical Utility," which Introduction was itself practically a reprint of an article by the writer in the *Times* of October 13, 1899, entitled "Legislation of the Past Session."



the provisions of the Reserve Forces Act, 1882, (*t*) which empower her Majesty by order under the hand of a Secretary of State to regulate the government, discipline, and pay of the Army Reserve, and other matters connected with it.

**Baths.**—The Baths and Washhouses Act (No. 29, E.) removes the restriction—as regards London already removed in 1896 (*u*)—imposed by the Act of 1878, (*x*) which first established public swimming baths, that the swimming baths might be closed or used for recreation or exercise or other public purposes from November to March, upon condition that they should not be used for music or dancing. In removing the restriction, the new Act enacts that the local authorities, before availing themselves of the removal, must obtain a proper music or dancing licence, that no portion of the premises is to be let otherwise than occasionally, that no money is to be taken for admission at the doors, and that the local authority having the management of the premises are to be responsible for any breach of the conditions on which the licence is granted which may occur during any entertainment given on the premises by their permission.

**Commons.**—The Commons Act (No. 30, E.), the greater part of which applies to all land subject to any rights of common and to all town and village greens, sets on foot a more simple procedure than that heretofore available for regulating any common or green, by enabling both urban and rural district councils to form and carry out schemes, subject to the supervision of the Board of Agriculture, with a view to the expenditure of money on the drainage, levelling, and improvement of commons. Lord Cross's Act of 1876 (*y*), which had similar purposes, requiring provisional orders and confirming Statutes to carry them into effect, is not repealed, but is probably made unnecessary. All the provisions of that Act for the benefit of the neighbourhood of a common—that free access to views is to be secured, that objects of historical interest are to be preserved, that privileges of playing games are to be established, that roads are to be set out, and that “any other specified thing is to be done which may be thought equitable and expedient”—may form part of a scheme under the new Act. Opportunities are given for raising objections to any scheme, and compensation may be obtained under the machinery of the Land Clauses Acts for any interest taken away or injuriously affected. When a scheme has been approved, the common will come under the management of the district council, who may delegate their powers to a parish council, and a parish council may contribute to the expenses of management. The digging of gravel for highway purposes is prohibited, further grants or enclosures of commons,

(*t*) 45 & 46 Vict. c. 48.

(*x*) 41 & 42 Vict. c. 14.

(*u*) 59 & 60 Vict. c. 59.

(*y*) 39 & 40 Vict. c. 56.

under the School Sites Act, 1841 (z), and nine other specified Acts, are restricted to cases where either a special Act of Parliament has authorised them, or a Government Department requires them, or the Board of Agriculture consents to them, and occasion has been taken to clear the Statute Book by the repeal of seven early Inclosure Acts passed from 1756 to 1840 inclusive.

**Corporate Joint Tenancies.**—The Bodies Corporate (Joint Tenancy) Act (No. 20, U.K.) enables a body corporate to hold any real or personal property in joint tenancy in conjunction either with an individual or with other bodies corporate, providing also that such a joint tenancy is to be subject to the like conditions as attach to the holding of property by a body corporate alone, and that on the dissolution of the corporate tenant the property shall devolve on the other joint tenant. Thus is set aside generally the old rule—already set aside specially as regards stock transferable in the books of the Bank of England by the National Debt Stockholders' Relief Act, 1892 (a)—that a corporation and an individual cannot be joint tenants together. The main reason of the old rule, as may be seen from a perusal of Mr. Justice Mathew's judgment in the case of the *Law Guarantee and Trust Society v. Bank of England* (b), which led to the passing of the Act of 1892, was that as a corporation does not die, an individual holding property in joint tenancy with it loses that right of survivorship which is one of the chief incidents of a joint tenancy, and in connection with the law of Trusts, the incident best known.

**Criminal Law.**—The Summary Jurisdiction Act (No. 22, E.) considerably extends the powers of justices of the peace—first conferred upon them in 1855—to deal with indictable offences summarily themselves instead of committing the offenders for trial at assizes or quarter sessions, as they have been for many hundred years bound to do except where particular Acts gave them summary jurisdiction by express words. The Act empowers justices to deal, with the consent of the accused, with any charge against an adult either of obtaining money or goods by false pretences where the amount obtained does not exceed forty shillings, or of maliciously setting fire to a wood or heath where the damage done does not exceed that amount, and where the accused is an adult pleading guilty or a "young person"—i.e. a person between the ages of twelve and sixteen—whatever be the value of the things obtained or the amount of the damage done. More important still is a provision which extends to all offences except homicide the jurisdiction of justices to deal summarily with youthful offenders (c) by their consent—a jurisdiction previously applicable only to the offences of larceny

(z) 4 & 5 Vict. c. 38.

(b) (1890), 24 Q. B. D. 406.

(a) 55 & 56 Vict. c. 39.

(c) See *infra*, p. 79.



and embezzlement of small amounts. In a Home Office circular explaining the Act, the hope was expressed "that this provision will remove some of the difficulties felt by justices in dealing with youthful offenders. The number of such offenders committed for trial will no doubt be materially reduced, and whenever a boy under fourteen consents to be dealt with by a Court of Summary Jurisdiction, and is convicted of any indictable offence other than homicide, the Court will now have the option of ordering a birching." (*d*) The Indictable Offences Act, 1848, (*e*) and the Summary Jurisdiction Act, 1879, (*f*) prescribe forms of address by justices to persons charged. The new Act repeats such a procedure in prescribing that an explanation of a false pretence be given to the person charged whenever justices propose to deal summarily with a charge of obtaining by false pretences. A long series of judicial decisions has established that the false pretence must represent that some non-existing fact exists, and the Act requires that the Court shall, after the charge has been read to the person charged, "state in effect that a false pretence means a false representation by words, writing, or conduct that some facts exist or existed, and that a promise as to future conduct not intended to be kept is not by itself a false pretence," and may add any such further explanation the Court may deem suitable to the circumstances.

The Reformatory Schools Act (No. 12, E.S.) declares it to be expedient that where a Court orders a youthful offender to be sent to a reformatory school, that offender shall not in the first instance be sent to a prison, and adds a few words to that effect to the Reformatory Schools Act of 1893, (*g*) which enables a Court to send to a reformatory any youthful offender below sixteen years of age convicted of an offence punishable by penal servitude or imprisonment, and either appearing to be not less than twelve or proved to have been previously convicted of a like offence. The new Act in no way affects s. 2 of the Act of 1893, by which the Court may direct that the offender be taken to a prison or other fit place until an order is made for his discharge or for his being sent to a school, such a direction not being equivalent in law to a sentence of imprisonment.

**Education.**—The Elementary Education School Attendance Act, 1893, (*gg*) Amendment Act (No. 13, E.) further raises to twelve years from eleven, to which it was raised from ten in 1893, the age at which total or partial exemption from school attendance can be obtained. The Act provides also that school boards, or school attendance committees where no school board exists, may fix thirteen years as the minimum age for

(*d*) See "Justice of the Peace," vol. 63, p. 521.

(*e*) 11 & 12 Vict. c. 48.

(*g*) 56 & 57 Vict. c. 48.

(*f*) 42 & 43 Vict. c. 49.

(*gg*) 56 & 57 Vict. c. 51.



attendance in the case of children to be employed in agriculture, and that a child of twelve may obtain partial exemption by making three hundred attendances in not more than two schools during each year for the five preceding years, whether consecutive or not.

The Elementary Education (Defective and Epileptic Children) Act (No. 32, E.) enables school boards or other school authorities to ascertain what children in their districts are defective ("that is to say, what children by reason of mental or physical defect are incapable of receiving proper benefit from the instruction in the ordinary public elementary schools") and what children are epileptic ("that is to say, what children, not being idiots or imbeciles, are unfit, by reason of severe epilepsy, to attend the ordinary public elementary schools"), with the view of having defective children educated in special classes of the existing schools, and epileptic children educated in new special schools. (*h*) Facilities for medical examination are to be provided, and parents may be compelled to avail themselves of them. A parental duty to provide instruction is to begin upon a child reaching seven years, in any place where a special class or school is within reach of the child's residence, and the period of education is to extend to the age of sixteen. Incorporating a provision of the Act of 1893 (*hh*) respecting blind and deaf children, the Act directs that the parent is to contribute towards the expenses of the child such weekly sum, if any (regard being had to the Free Education Act of 1891), (*i*) as may be agreed upon between the school authority and the parent, or settled by a Court of Summary Jurisdiction in the case of difference, and just as, under the Act of 1893, the Education Department may give aid from the Parliamentary grant.

The Board of Education Act (No. 33, E.), (*k*) which did not come into operation until April 1, 1900, establishes a Board of Education, to consist of a President, the Lord President of the Privy Council (unless appointed President), the principal Secretaries of State, the First Commissioner of the Treasury, and the Chancellor of the Exchequer. The Board so formed takes the place of the Education Department, including the Department of Science and Art. Such powers of the Charity Commissioners and the Board of Agriculture as relate to education were transferred by Order in Council (*l*) to the new Board, which may also, either independently or after taking the advice of a "consultative committee," two-thirds of the members of which are to be persons qualified to represent the views of universities and other bodies interested in education, inspect any school supplying secondary education and

(*h*) See *infra*, p. 103.

(*hh*) 56 & 57 Vict. c. 42.

(*i*) 54 & 55 Vict. c. 56.

(*k*) See *infra*, p. 146.

(*l*) See Statutory Rules and Orders Revised, 1904, vol. iv., tit. "Education," pp. 1-6.

desiring to be so inspected. The committee and the Board are also to work together in framing an alphabetical register of teachers. (*m*)

**Electric Lighting.**—The Electric Lighting Clauses Act (No. 19, U.K.) is framed upon the system, first set on foot in 1845 by the Companies Clauses, Land Clauses, and Railway Clauses Consolidation Acts, of comprising in one general Act sundry provisions, usually introduced in numerous special Acts passed for the same purpose, with the laudable objects (as declared in the preambles of the Acts) of both avoiding the necessity of repeating such provisions in each of the several Acts and of ensuring greater uniformity in the provisions themselves. Electric lighting, though pretty fully dealt with by a general Act of 1882, (*n*) has very frequently required further special legislation, either by provisional order of the Board of Trade confirmed by Statute, or by Statute not preceded by such order. The new Act, in two short sections and a lengthy schedule, establishes a model code which is to be deemed incorporated with every future provisional order and every future special Act authorising the supply of electricity, save so far as it may be expressly varied or excepted by the particular order or special Act itself.

The code is contained in eighty clauses, incorporating bodily and applying to electricity numerous provisions of the Gasworks Clauses Acts of 1847 (*o*) and 1871 (*p*) as to breaking up streets, waste of gas, and injury to meters, binding promoters to furnish sufficient supply of energy within the area of supply, and to supply energy to public lamps within the distance of seventy-five yards from their distributing mains, and directing that the prices to be charged for energy supplied shall not exceed those stated in the special order or special Act, or, in the case of a method of charge approved by the Board of Trade, such prices as the Board of Trade determine on approving the method. Other clauses provide at great length for the appointment of electric inspectors and the testing of mains, the ascertainment by meters of the amount of energy supplied, the provision of a map of supply to be annually corrected, and the revocation of powers in case of insolvency or inability to carry on an electric undertaking at a profit.

**Food.**—The Sale of Food and Drugs Act (No. 51, U.K.) (*q*) contains three provisions of great general importance, and numerous detailed amendments of the Margarine Act of 1887 (*r*) and the Sale of Food and Drugs Acts of 1875 (*s*) and 1879 (*t*). A string of provisions directed against the importation of margarine and other foods insufficiently

(*m*) Repealed by 7 Edw. VII. c. 43.

(*o*) 10 & 11 Vict. c. 15.

(*q*) See *infra*, p. 141.

(*s*) 38 & 39 Vict. c. 63.

(*n*) 45 & 46 Vict. c. 56.

(*p*) 34 & 35 Vict. c. 41.

(*r*) 50 & 51 Vict. c. 29.

(*t*) 42 & 43 Vict. c. 30.



described upon their containers is followed by an authorisation of future Orders in Council applying such provisions to the importer of any adulterated or impoverished article of food not imported in packages or receptacles conspicuously marked with a name or description indicating that the article has been so treated. The Local Government Board in any matter appearing to affect the general interests of the consumer, and the Board of Agriculture in any matter appearing to affect the general interests of agriculture in the United Kingdom, may direct their officers to procure samples of any article of food for analysis. And it is declared to be the duty of every local authority entrusted with the execution of the Sale of Food and Drugs Act to appoint a public analyst, and to put in force the powers with which they are invested, so as to provide proper securities for the sale of food and drugs in a pure and genuine condition, and in particular to direct their officers to take samples for analysis. It is added that the Local Government Board or Board of Agriculture may themselves institute proceedings if of opinion, after communication with a local authority, that that authority have failed in their duty in relation to any article of food and that their failure affects the general interests of the consumer or of agriculture as the case may be.

Amongst amendments in detail may be mentioned the new definition of food—the main effect of which will be to apply the Acts to baking powder—the extension of the Margarine Act to margarine cheese, the restriction to 10 per cent. of the allowable percentage of butter fat in margarine, the requirement that any person selling milk or cream from a can or other receptacle in any highway or place of public resort must have his name and address inscribed on the receptacle, and the penalising of the importation, except in containers showing their character, of margarine, margarine cheese, adulterated or impoverished butter, or condensed, separated, or skimmed milk. In connection with the last of these provisions there is a direction that the Commissioners of Customs shall, in accordance with directions given by the Treasury, after consultation with the Board of Agriculture, take such samples of consignments of imported articles of food as may be necessary for the enforcement of the law.

**Improvement of Land.**—The improvement of Lands Act (No. 46, U.K.) fixes the period for repayment of money borrowed by a limited owner under the Improvement of Land Act of 1864 (*u*) and its amending Acts for the purpose of improving land at such period not exceeding forty years as the Board of Agriculture, having regard in each case to the character and probable duration of the improvement, may determine; and enacts that the land charged for repayment may comprise not only

(*u*) 26 & 27 Vict. c. 88.



the land improved, but also any other land of the same owner which, in the opinion of the Board of Agriculture, may properly be included in the charge. These improvements being frequently effected by money borrowed of companies incorporated by Statute, the new Act provides that a resolution passed by three-fourths of the shareholders of any such company to execute or advance money for improvements shall have the same legal effect as if the improvement were an improvement authorised by the special improvement Act relating to the company. The Board of Agriculture may apply the Act retrospectively to planting, and may extend the term for repayment within the limits authorised by the Act.

**Inebriates.**—The Inebriates Act (No. 35, U.K.) enacts that the expenses of prosecuting habitual drunkards under the Act of 1898 (*x*) shall be payable out of the local rates upon an order to that effect by the judge of assize or chairman of quarter sessions if the prosecution be on indictment, or by a Court of Summary Jurisdiction if the offence be one which is dealt with summarily, and also that the breach of any regulations respecting “certified inebriate reformatories” is to be summarily punishable.

**London.**—The London Government Act (No. 14) divides the whole of the administrative county of London, exclusive of the City, into twenty-eight boroughs, as substitutes for nearly one hundred vestries and other boards, naming as “areas which are to be boroughs” fifteen whole parishes and thirteen composite areas. The fifteen parishes named are Battersea, Bethnal Green, Camberwell, Chelsea, Fulham, Hackney, Hammersmith, Hampstead, Islington, Kensington, Lambeth, Paddington, Marylebone, St. Pancras, and Shoreditch; and the thirteen composite areas include, amongst others, the area consisting of the parishes of Mile End Old Town and St. George’s-in-the-East, and the districts of the Limehouse and Whitechapel Boards of Works, including the “Tower of London and the liberties thereof,” the Wandsworth District Board, the Parliamentary division of Holborn, the Parliamentary borough of Greenwich, and the “ancient Parliamentary borough of Westminster.” For each of the boroughs so formed an Order in Council has established a separate council—on which, though women could and did serve on vestries, no women may serve (*y*)—to consist of a mayor, aldermen, and councillors. Numerically the councils are generally smaller than the vestries, whose members rose in number from eighteen to a hundred and twenty, in proportion to the population of their parishes. The number of aldermen is one-sixth the number of councillors, the total number of aldermen and councillors in no case exceeds seventy, and the number of councillors, subject to this limit,

(*x*) See *supra*, p. 19.

(*y*) See *infra*, p. 86.

is fixed by Order in Council, which authority has also fixed wards for each borough, assigning a number, divisible by three, of councillors to each ward.

After these comparatively simple provisions, the Act, in sub-ss. 4 and 5 of s. 2, falls back upon the complexities of incorporation by reference as follows:—

Except as otherwise provided by or under this Act, the provisions of the Local Government Act, 1888, with respect to the chairman of the County Council and the county aldermen respectively shall apply to the mayor and aldermen of a metropolitan borough respectively, and for this purpose references in that Act to the chairman of the County Council and to county aldermen shall be construed as references to the mayor and aldermen of the borough.

Except as otherwise provided by or under this Act, the law relating to the constitution, election, and proceedings of administrative vestries and to the electors and members thereof, shall apply in the case of the borough councils under this Act and the electors and councillors thereof, and s. 46 of the Local Government Act, 1894, relating to disqualifications shall apply to the offices of mayor and alderman.

The so incorporated Local Government Act, 1888, (*z*) itself incorporates the Municipal Corporations Act, 1882, (*a*) in great part, and the Local Government Act, 1894, (*b*) which mainly regulates the vestry and district board elections, leaves undisturbed much of the Metropolis Management Act, 1855, (*c*) which reformed vestries and created district boards, so that the edifice of 1899 is reared on four main statutory foundations. The resulting electoral law may be very briefly stated as follows:—The electors of the metropolitan borough councils will be all persons registered either as parochial electors or as Parliamentary electors, registration being in either case essential to the right to vote, but being allowable in every borough for which the qualification to vote exists. The parochial franchise is possessed by every man of full age, and by every woman of full age, whether married or single, who for twelve months preceding any 15th of July before the annual autumn registration has been an inhabitant occupier of some house or part of a house separately occupied within the borough, or has been an occupier of some land of not less than £10 yearly value within the borough and has resided during six months within fifteen miles of it. Husband and wife cannot both be qualified in respect of the same property. The Parliamentary franchise—the main distinctions between which and the local government franchise consist in its being restricted to men and in its being enjoyed by lodgers—may be enjoyed by occupying servants as

(*z*) 51 & 52 Vict. c. 41.

(*b*) 57 & 58 Vict. c. 53.

(*a*) 45 & 46 Vict. c. 50.

(*c*) 18 & 19 Vict. c. 130.



well as by lodgers, and by £10 occupiers of land who have resided within seven miles of the borough during six months.

Any man qualified to elect councillors, or resident in the borough for the twelve months preceding an election, is himself qualified for election as councillor, mayor, or alderman, the mayor being a "fit person" elected by the council from amongst the councillors or possible councillors. There are disqualifications by bankruptcy, by convictions of crime, by having a contract with the council, and by absence from meetings for more than six consecutive months. Ministers of religion are expressly qualified to be aldermen, and so are peers owning property in the borough.

Aldermen are elected by the councillors, and serve for six years, one-half going out every third year. Councillors are elected for three years, one-third of the councillors for each ward going out every year, but the time for the retirement of the first councillors elected will be fixed by Order in Council, and upon the request of any borough council the Local Government Board may make an order for the triennial retirement of all the councillors together. The election of the councillors, if contested, is by secret voting under the Ballot Act, each elector being entitled to give one vote and no more for each of any candidates not exceeding the number of councillors to be elected, and to vote only in the ward for which he is registered. Aldermen are elected by each voting councillor signing and personally delivering to the chairman of the council meeting a voting paper containing the names, etc., of the persons for whom he votes.

All powers, duties, property, and liabilities of each existing vestry and district board are transferred to the council of the borough comprising the area within the jurisdiction of such vestry and district board, the borough councils succeeding such vestries and boards just as the County Council succeeded the Metropolitan Board of Works.

Annual meetings are held in each November for the election of mayor, and the mayor may at any time call a meeting, but otherwise the regulation of meetings is left to the discretion of the council. The quorum is one-third of the whole number of the council, and questions are determined by the majority of members present and voting. The appointment of a finance committee is obligatory, and other committees may be appointed with a quorum of three for any purpose which in the discretion of the council would thus be better regulated, "persons," and therefore women, who are not members of the council being eligible for a library committee. Any council also may concur with any other in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested.

Multitudinous details still remained for settlement, and the duty of



settling them was delegated by Parliament to two carefully chosen bodies, one of them consisting of three special Commissioners, and the other of seven Privy Councillors. Amongst the matters to be dealt with by this delegation of Parliamentary powers were the naming, and nominally, even the creation, of the new boroughs, the more exact formation of the twenty-eight areas primarily designated boroughs, and, subject to the limit of seventy, the fixing of the numerical strength of each council. In some cases, as in providing for the inclusion of detached parts of parishes into adjoining boroughs, the Privy Council Committee were bound to make an order; in others, such as detaching Kensington from Westminster and attaching it to Kensington, and in making provision for adapting the enactments relating to the registration of electors, the Committee had a discretion either to act or not as they thought fit.

The Metropolis Water Act (No. 7), empowers and requires the eight water companies which supply London with water, if so required by the Local Government Board, to submit schemes enabling them to supply each other with water from any sources of supply which any of them has power to use, and to construct such works as may in the opinion of the Board be necessary for that purpose, and also in cases of emergency to supply such water as may be required for the need of another company, and may be available after satisfying the requirements of the district of the supplying company.

The Metropolis Management Acts Amendment (Bylaws) Act (No. 15) enables the London County Council to make bylaws requiring contractors about to construct drains communicating with sewers to deposit with the sanitary authority of the district such plans as may be necessary for the purpose of ascertaining whether their operations are "in accordance with the statutory provisions relative thereto," which provisions are mostly to be found in the Public Health (London) Act, 1891. (*d*) These provisions are an extension of a section of the Metropolis Management Act, 1855, (*e*) which formerly empowered the Metropolitan Board of Works, and now empowers the London County Council, to make bylaws for regulating the dimensions and mode of construction, cleansing, and repairing drains communicating with the sewers in London.

**Marriage.**—The Marriages Validity Act (No. 27, E.I.) effects an important amendment or declaration of the law (for it is not quite certain which) in relation to marriages of persons of whom one was in the case of a marriage in England resident in Ireland, or in the case of a marriage in Ireland resident in England, upon banns published in any church of the place in which such person was resident according to the

(*d*) 54 & 55 Vict. c. 76.

(*e*) 18 & 19 Vict. c. 120.

law there prevailing, and not in the manner required for the publication of banns in the part of the United Kingdom in which the marriage takes place. It appears to have been doubtful whether before this Act, and since the disestablishment of the Irish Church in 1869, (*f*) an English marriage could be validly solemnised on Irish banns, though pretty clear that an Irish marriage could have been solemnised on English banns. The new Act is retrospective as well as prospective.

**Parish Councils.**—The Parish Councillors (Tenure of Office) Act (No. 10, E.) provides for the election of parish councils triennially instead of annually as fixed by the Local Government Act of 1894, (*g*) which first called parish councillors into existence. Parish councillors are to go out of office on April 15, 1901, instead of in 1900, and the annual meetings are to be held on or within seven days of April 15, instead of on or within seven days after April 15 as under the Act of 1894.

**Poor Law.**—The Poor Law Act (No. 37, E.I.) deals with two quite separate subjects—the care of pauper children and the detention of paupers in a workhouse, in each case extending the application of a previous Statute by reading into it additional provisions drawn up in statutory shape. The control of guardians over pauper children left helpless by the desertion or imprisonment of either parent is extended to cases where the guardians are of opinion that from mental deficiency or vicious life the parent is unfit to have control, or where the parent is incapacitated by detention as an habitual drunkard, or in case of death of both parents, or of the mother if the child be illegitimate. In any of these cases the guardians may at any time resolve that until the child is eighteen all parental rights of the parent in default, or, if the parents be dead, of both parents, shall vest in the guardians whether the child continues or not to be maintained by them. A similar resolution may also be passed, with consent of the parent, if the parent is permanently bedridden or disabled and is the inmate of a workhouse.

The powers of rescinding any such resolutions possessed by the guardians themselves are extended so as to allow a child to be handed over to a friend, or any society or institution for the care of children, and the guardians, as well as the parents of children, are granted a *locus standi* to invoke the interference of a Court of Summary Jurisdiction. A penalty is newly imposed on persons assisting pauper children to escape from the control of the guardians, and the guardians are directed, in the case of any child maintained by them and with their consent adopted by any person, to cause the child to be visited twice a year for three years from the date of the adoption by some competent person, to report to them on the visit, with the view that

(*f*) 32 & 33 Vict. c. 42.

(*g*) 56 & 57 Vict. c. 73.



the guardians, if so advised, may revoke their consent to the adoption and replace the child under their own complete control.

**Public Health.**—The Infectious Diseases Notification Extension Act (No. 8, E.) extends the operation of the adoptive Infectious Diseases Notification Act of 1889, (*h*) whether already adopted or not, to the whole of England and Wales. (*i*) The Act of 1889 is one of four similarly adoptive extensions of the Public Health Act, 1875, (*k*) which itself originated in adoptive Acts of 1848 (*l*) and 1858, (*m*) so that sanitary history is repeating itself. The form of adoption has been by urban and rural district councils, and up to March, 1898, the Act of 1889, which applied to London without necessity of adoption, had been adopted by 917 urban and 632 rural, and 40 port authorities. The Act, therefore, though theoretically it effects a great change, practically effects very little (its system having been always in force amongst twenty-eight out of twenty-nine millions of the population of England and Wales), with the exception that the power of revocation which co-existed with the adoptive law is now done away with. There are none but formal amendments of the Act of 1889. The diseases comprised in that Act are small-pox, cholera, diphtheria, membranous croup, scarlatina, scarlet fever, and other fevers—a list which may be added to by the local authority of any district. Of the diseases on the list, instant notice of attack has to be given by the head of the family to which the patient belongs to the district officer, to whom also every doctor in attendance is to send a certificate stating particulars.

**Revenue.**—The Finance Act (No. 9, U.K.), besides continuing the fourpenny duty on tea and the eightpenny income tax, slightly increased the wine and spirit duties, considerably diminished the amount applicable to the repayment of the National Debt, and made numerous small changes in the stamp duties. The most important of these changes are as follows:—Five shillings per cent. is substituted for two shillings on the share capital of any company to be newly registered with limited liability, two shillings and sixpence per cent. is newly imposed on the loan capital of any local authority or company, the penny duty on letters of allotment and renunciation where the amount is not less than £5 is raised to sixpence, and there is a slight reduction of duty on foreign bills of exchange and on bills of exchange expressed to be payable not exceeding three days after date or sight. The stamp law as to policies of insurance against accident is expressed to include policies of insurance against liability incurred by

(*h*) 52 & 53 Vict. c. 72.

(*i*) The Act of 1889 applied also to Scotland and Ireland, and will still be adoptive only in those countries.

(*k*) 38 & 39 Vict. c. 55.

(*l*) 11 & 12 Vict. c. 63.

(*m*) 21 & 22 Vict. c. 10.



employers in consequence of claims made upon them by workmen who have sustained personal injury when the annual premium on such policies does not exceed £1; and “sub-s. 1 of s. 52 of the Stamp Act, 1891, (*n*) which relates to the definition of a contract note, shall be construed as if after the word ‘principal’ where it secondly occurs in that sub-section, there were added the words ‘being a member of a Stock Exchange in the United Kingdom’”—an awkwardly expressed amendment of the law which appears to have the effect of doing away with any necessity of more than one contract note in respect of country and other Stock Exchange transactions, which as between members of the Stock Exchange and the public are one, though as amongst members of the Stock Exchange themselves they may be split up or passed on. As thus amended, the enactment of the Act of 1891 will now run thus:—

For the purpose of this Act the expression “contract note” means the note sent by a broker or agent to his principal (except where such principal being a member of a Stock Exchange in the United Kingdom is acting as broker or agent for a principal) advising him of the sale or purchase of any stock or marketable security.

The duty on such contract notes in cases of stock of the value of £100 or upwards (formerly one penny in all cases), raised to sixpence in 1888, and left at sixpence in 1891, was further raised to a shilling in 1893. It may be added to the charge for brokerage.

**Shipping.**—The Anchors and Chain Cables Act (No. 23, U.K.) consolidates and simplifies with many small amendments in twenty-one sections and a lengthy schedule three Acts passed in 1864, (*o*) 1871, (*p*) and 1874, (*q*) in connection with the testing and sale of chain cables and anchors, the Act of 1864, which was at first temporary only, declaring by its preamble that it is essential for the better security of lives and property afloat in sea-going ships to make provision for proper testing. This preamble, after the fashion of modern legislation, is omitted from the new Act, which plunges at once *in medias res* by enacting that “a maker of or dealer in anchors or chain cables shall not sell or contract to sell, nor shall any person purchase or contract to purchase for use on any British ship, any chain cable or any anchor exceeding in weight 168 lbs. unless it has been previously proved in accordance with the Act,” adding “that if any person acts in contravention of this section he shall be guilty of a misdemeanour.” This section substitutes “for use on” for “for the use of” any British ship, but otherwise closely copies a section of the Act of 1874. With unusual vagueness the Act is silent here and elsewhere as to the maximum punishment for the

(*n*) 54 & 55 Vict. c. 39.

(*p*) 34 & 35 Vict. c. 101.

(*o*) 27 & 28 Vict. c. 27.

(*q*) 37 & 38 Vict. c. 51.

misdeameanour in contravention of it. Contracts for sale are to be deemed to imply a warranty that proof has taken place, but no maker, dealer, or shipowner is to be relieved by the Act from any responsibility, to which, but for the Act, he would have been subject. Provisions are made for the granting of Board of Trade testing licences to "the Committee of Lloyd's Register of British and Foreign Shipping for testing establishments at London, Bristol, Tipton, Netherton, Saltney, Monkwearmouth, Sunderland, and Low Walker, or elsewhere," and twelve other testing establishments, and for denoting tests by stamping the anchors and chain cables, and a long schedule displays elaborate tables of the tensile and breaking strains to be used for testing, which are subject to alteration by the Board of Trade, but as yet have a statutory force.

**Shop Seats.**—The Seats for Shop Assistants Act (No. 21, U.K.) enacts that—

In all rooms of a shop, or other premises where goods are actually retailed to the public, and where female assistants are employed for the retailing of goods to the public, the employer carrying on business in such premises shall provide seats behind the counter, or in such other position as may be suitable for the purpose, and such seats shall be in the proportion of not less than one seat to every three female assistants employed in each room.

The fine for non-compliance with these provisions may go up to £3, and in the case of a subsequent offence to £5, with a minimum of £1.

The Act is to be read as one with the Shop Hours Acts, 1892 to 1895, and resort must be had to the Act of 1892 (*r*) for provisions as to the appointment, and to the Act of 1893 (*s*) for provisions as to the payment, of inspectors. The expression "goods" is a very comprehensive one and includes intoxicating liquors.

**Small Dwellings.**—The Small Dwellings Acquisition Act (No. 44, U.K.) enables local authorities, with wide administrative powers, to advance money to residents in small houses for the purpose of acquiring the ownership of them. There are no powers of compulsory purchase. The residents must be also occupiers, and "ownership" is defined as being "such interest or combination of interests in a house as, together with the interest of the purchaser of the ownership, will constitute either a fee simple in possession or a leasehold interest in possession of at least sixty years unexpired at the date of the purchase." The purchaser may be any person whatever, and the purpose of purchase may be any purpose whatever except that of sale of intoxicating liquors, but the purchaser must either reside or intend within at least six

(*r*) 55 & 56 Vict. c. 62.

(*s*) 56 & 57 Vict. c. 67.



months to reside in the house. The market value of the house must not, in the opinion of the local authority, exceed £400, but with this exception there is no express limit of size, position, or price. As to the amounts which may be advanced, the limits are precise, but the discretion of the local authority in ascertaining those limits appears to be unlimited and uncontrolled. "Any advance," it is said, "shall not exceed four-fifths of that which in the opinion of the local authority is the market value of the ownership; nor £200, or in the case of a fee simple or leasehold of not less than ninety-nine years unexpired at the date of the purchase £300." The advance is to be repaid with interest "at such rate as may be agreed upon not exceeding ten shillings above the rate at which the local authority can at the time borrow from the Public Works Loan Commissioners," within thirty years at most, and the repayment may be made either by equal instalments of principal or by an annuity of principal and interest combined.

As there is no power of compulsory purchase, so also there are no words obliging a local authority to make an advance when applied for, but there are many express restrictions upon their power of making one. Thus, they must be satisfied (1) that the applicant resides or intends to reside in the house and is not already a proprietor of a house to which the statutory conditions apply; (2) that the value of the ownership of the house is sufficient; (3) that the title is one which a mortgagee would accept; (4) that the house is in good condition; and (5) that the repayment of the advance is secured by an instrument vesting the ownership in the local authority subject to redemption by the applicant. After acquisition of ownership the house is held subject to the conditions (1) that every sum due for principal and interest shall be punctually paid; (2) that the proprietor shall reside; (3) that the house shall be kept insured; (4) that it shall be kept in good sanitary condition and good repair; (5) that it shall not be used for the sale of intoxicating liquors or so as to be a nuisance; and (6) that the local authority may enter at all reasonable times to see whether these conditions are complied with. The ownership may be transferred with the consent of the local authority, which is not to be unreasonably withheld, and the house may with like consent be let furnished for not more than four months in any twelve. If default be made in complying with any of the statutory conditions, the local authority may either take possession of the house or order a sale of it—at once, if the default consists in not punctually paying the principal and interest of the advance, and within two months after notice not complied with in any other case of default. Such possession or sale is to be accompanied by a repayment of the sums paid to the local authority on account of repayment of the advance.



The local authorities are the county councils, the county borough councils, and also district councils under the following circumstances:—

If the council of any urban district not being a county borough, or of any rural district, pass a resolution undertaking to act under this Act, that council shall, subject in the case of the council of a district containing a population according to the last census for the time being of less than 10,000 to the consent of the county council, be the local authority in that district for the purpose of this Act to the exclusion of any other authority: provided that if the council of any district are dissatisfied with any refusal or failure of the county council to give their consent, they may appeal to the Local Government Board, and the Local Government Board may, if they think fit, give their consent, and the consent so given shall have the same effect as the consent of the county council.

**Solicitors.**—The Solicitors Act (No. 4, E.I.) empowers the Master of the Rolls to reinstate any solicitor struck off the roll for wilfully acting as agent for a person not qualified to be a solicitor. The Consolidating Solicitors Act of 1843, (*l*) re-enacting a provision of an Act of George II., has armed the High Court of Justice with the striking-off power in terms which have been judicially held to leave no discretion to the Court, (*u*) and the Statute itself plainly directs that the offender, after being struck off, shall for ever after be disabled from practising. There is no express repeal of the Act of 1843, and the offending solicitor will have to be struck off the rolls as before on application to the Court and proof of the offence, but the Master of the Rolls in his sole and unqualified discretion will have power to replace him. The Act also facilitates the obtaining of new certificates to practise by solicitors applying for them after having been struck off the roll or suspended from practice.

**Supreme Court.**—The Supreme Court of Judicature Act (No. 6, E.) enacts that, if all parties to an appeal from the High Court of Justice to the Court of Appeal consent, an appeal to or motion in that Court may be heard by two judges instead of not less than three as, with regard to all appeal from final judgments, was provided in 1875, (*x*) by the Judicature Act of that year. The right, if any, of further appeal to the House of Lords—which the Appellate Jurisdiction Act of 1876 (*y*) gives in very comprehensive terms—is preserved, and there are cautious savings—(1) for infants and other parties under disability, whose consent to a weaker Court must be given by next friends or other representatives; and (2) for cases being reargued and determined, upon application by any party to the appeal, by three judges before appeal to the House of Lords, upon the two judges differing in opinion.

(*l*) 6 & 7 Vict. c. 73.

(*x*) 38 & 39 Vict. c. 77.

(*u*) See *In re Kelly*, [1895] 1 Q. B. 180.

(*y*) 39 & 40 Vict. c. 59.

**Telegraphs.**—The Telegraphs Act (No. 38, U.K.), after empowering the Treasury to grant two millions for the purpose of the Telegraph Acts, allows borough and urban district councils, when licensed by the Postmaster-General to provide a system of public telephonic communication, to defray out of the local rates the expenses of exercising the powers conferred by the licence.

**Tithe.**—The Tithe Rent-Charge (Rating) Act (No. 17, E.) enacts that—

The owner of tithe rent-charge attached to a benefice shall be liable to pay only one-half of the amount of any rate to which this Act applies, which is assessed on him as owner of that tithe rent-charge, and the remaining one-half shall, on demand being made by the collector of the rate on the surveyor of taxes for the district, be paid by the Commissioners of Inland Revenue out of the sums payable by them to the Local Taxation Account, on account of the estate duty grant.

The Act applied to every rate made after September 15, 1899. It will continue to operate only during the continuance of the Agricultural Rates Act, (z) 1896, by which a similar relief from half their rates was accorded to the occupiers of agricultural land—that is, only until March 31, 1901. (a) The rates to which the Act applies are those defined by s. 9 of the Act of 1896, except any rate which the tithe owner, as compared with the occupier of buildings, is liable to be assessed to in the proportion of one-half or less, and all rates usually comprehended in that term are comprehended in that definition.

**Scotland and Ireland.**—The Fine or Imprisonment (Scotland and Ireland) Act (No. 11) assimilates the law of Scotland and of Ireland as to imprisonment in default of payment of fines to that of England, as it is to be found in s. 9 of the Prison Act, 1898. (b) The English enactment is followed word for word to the effect that on payment of any part of a fine imposed by a Court of Summary Jurisdiction, and of the charges for which the prisoner is liable, the term of imprisonment to which a person has been sentenced for non-payment of the fine shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which the prisoner is sentenced as the sum so paid bears to the sum for which he is so liable.

**Scotland.**—The Private Legislation Procedure (Scotland) Act (No. 47) improves and extends the procedure for obtaining Parliamentary powers by way of provisional orders. Proceedings are to be commenced by petition to the Secretary for Scotland for the provisional order

(z) 59 & 60 Vict. c. 16.

(a) This legislation has been continued in force pending a general reform of local taxation.

(b) See *supra*, p. 23.



required. The two Parliamentary Chairmen—the Chairman of Committees of the House of Lords and the Chairman of Ways and Means in the House of Commons—consider the question, and if they or either of them report that the provisions of the draft order do not relate wholly or mainly to Scotland, or are of such a character that they ought to be dealt with by Bill, the Secretary for Scotland is directed to refuse to issue the provisional order. If the Chairman report that the provisional order may proceed, the Secretary for Scotland has to take the petition for it into consideration, and to direct an inquiry if there be opposition, “or in any case in which he thinks an inquiry necessary,” by Commissioners sitting in Scotland “at such place as they may determine with due regard to the subject-matter of the proposed order, and to the locality to which its provisions relate.” The sittings are to be held from day to day in public, and the order may be made as prayed for, or with modifications submitted by the Commissioners. Any order made requires confirmation by Bill, which, after introduction, is to be deemed to have passed through all its stages up to and including Committee, and is to be ordered to be considered in either House as if reported from a Committee.

The Public Libraries (Scotland) Act (No. 5) allows the authorities of any two or more neighbouring burghs or parishes to combine for any period in carrying the principal Scottish Public Libraries Act, when adopted, into execution.

**Ireland.**—The Partridge Shooting (Ireland) Act (No. 1) alters the Irish partridge shooting season, fixed by the Irish Parliament so long ago as 1797, so as to begin on September 20th and end on January 10th. The new day of commencement is September 1st, and of ending February 1st, as fixed in England by the Game Act of 1831, (*c*) which applies neither to Scotland nor Ireland.

The Congested District Board (Ireland) Act (No. 18) amends the Land Law (Ireland) Act, 1896, (*d*) in the case of the purchase of an estate or part of it by the Congested District Board for the purpose of re-sale to the tenants, and subsidises the Board to the extent of not more than £25,000 a year, subject to such conditions as the Treasury may require.

The Agriculture and Technical Instruction (Ireland) Act (No. 50) establishes a Department of Agriculture in Ireland, and also, to assist that Department, a Council of Agriculture, an Agricultural Board, and a Board of Technical Education. Various moneys are placed at the disposal of the Department, and the Department is specially authorised to take proceedings (1) before the Railway Commissioners against companies withholding reasonable facilities for receiving, forwarding, or delivering traffic, or otherwise contravening the Railway and Canal

(c) 1 & 2 Will. IV. c. 32.

(d) 59 & 60 Vict. c. 47.



Traffic Acts; and (2) before justices of the peace against persons selling deleterious or worthless feeding stuff for cattle, or otherwise misbehaving themselves in contravention of the Fertilisers and Feeding Stuffs Act, 1893. (*e*)

**1900** (*f*) Acts passed—Public General, 63; Local, 291; Private, 1.

A Parliament legislating in its fifth year and seventh Session during a time of war could not have been expected to do very much, and her late Majesty the Queen had warned Parliament in her opening speech that the time was not propitious for domestic reforms involving a large expenditure. The legislative output, however, was greater both in quantity and quality than had been anticipated. The Commonwealth of Australia Constitution Act, the Companies Act, the Agricultural Holdings Act, the Workmen's Compensation Act, the Money-Lenders Act, and the Housing of the Working Classes Act were placed on the Statute Book, sixty-three Acts being passed in all. Subjoined is an account of the principal Acts, supplying where necessary or desirable such additional information as the Legislature too frequently gives merely by allusive reference to previous legislation.

**Agriculture.**—The Agricultural Holdings Act (No. 50, E.S.) (*ff*) considerably alters the law in point of substance and very considerably alters it in point of form. The consumption of corn by stock and the laying down temporary pasture are added to the list of improvements for which, though effected without either consent of, or notice to, his landlord, a tenant may claim compensation; a tenant is enabled to send in a claim up to the last day of his tenancy instead of being obliged to send it in at least two months before that day; if he has acquired fixtures or buildings, they become removable at the end of the tenancy to the same extent as if he had himself put them up; and, with some important exceptions, the liability to pay higher fixed rents in the event of breaches of covenant is reduced to a liability to pay damages to the extent only of the damage actually suffered, the exceptions being of covenants against breaking up permanent pasture, grubbing underwoods, felling, cutting, or lopping or injuring trees, and of covenants regulating the burning of heather. The landlord gains the right, which he already has in the majority of cases if the contract of tenancy be in writing, but not otherwise, of entering a farm at all

(*e*) 56 & 57 Vict. c. 56.

(*f*) This summary of the principal public Acts of the session is a reproduction, with some alterations and additions, of the Introduction by the late Mr. J. M. Lely to the Continuation Volume for 1900 of Chitty's "Statutes of Practical Utility," which Introduction was itself practically a reprint of an article in the *Times* of October 8, 1900, entitled "Legislation of the Past Session."

(*ff*) See *infra*, p. 130.

reasonable times for the purpose of ascertaining its condition, and both parties gain the power, occasionally inserted in written contracts of tenancy, of referring claims outside the Acts to arbitration under the Acts.

Thus far as to points of substance. As to points of form, the right of compensation is new, the list of improvements is new, and the whole procedure for arbitration is new, seventeen sections (including the first) and the main schedule of the Act of 1883 (*g*) being wholly repealed, and s. 1 of the new Act commencing as follows:—

When a tenant has made on his holding any improvement comprised in the first schedule to this Act he shall . . . be entitled at the determination of a tenancy on quitting his holding to obtain from the landlord as compensation . . . for the improvement such sum as fairly represents the value of the improvement to an incoming tenant. Provided always that in estimating the value of any such improvement there shall not be taken into account as part of the improvement made by the tenant what is justly due to the inherent capabilities of the soil.

The scheduled improvements now amount to twenty-seven in all. In the case of buildings and fifteen other kinds of permanent improvement, the consent of the landlord must have been obtained or compensation will not be recoverable. In the case of drainage, notice must have been given. In the case of ten kinds of lesser improvement, such as claying, liming, application of purchased manure, “consumption on the holding by cattle, sheep, pigs, or by horses, other than those regularly employed on the holding, of corn, cake, or other feeding stuff not produced on the holding,” laying down temporary pasture and planting asparagus in a market garden, neither consent of the landlord nor notice to him is a condition of the right of the tenant to compensation.

Forms of award have been prescribed by the Board of Agriculture, as directed by the Act, and any forms for proceeding in an arbitration which may be so prescribed are to be sufficient if used. Points of law will go first to the county court judges and from them direct to the Court of Appeal, whose judgment will be final. Wilfully false evidence in an arbitration is made perjury (as in the Act of 1883), and (as in that Act) “may be dealt with, prosecuted, and punished accordingly”—that is to say, by penal servitude or imprisonment. Unlike the Act of 1883, which is followed on the Statute Book by a separate Scotch Act, the new Act extends to Scotland, contains two sections applicable to Scotland only, and repeals thirteen whole sections, together with the improvement schedule, of the Scots Act.



The Workmen's Compensation Act (No. 22, U.K.) (*h*) "to extend the benefits of the Workmen's Compensation Act, 1897, to workmen in agriculture," is as short as it is comprehensive, containing one operative section only, and depending for its effect almost wholly upon the Workmen's Compensation Act of 1897, (*i*) and the rules under that Act, which, though originally limited in its application to railway, factory, and other named dangerous employments only, is now directed to "apply to the employment of workmen in agriculture by any employer who habitually employs one or more workmen on such employment." The expression "agriculture" includes "horticulture, forestry, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit and vegetables"—a definition obviously borrowed from that given in the Small Holdings Act of 1892, (*k*) from which it differs only in unimportant particulars. Comprehensive as this definition is, the application of the Act is made more comprehensive still by the direction that, where any workman is employed by the same employer mainly in agricultural, but partly or occasionally in other work, the Act is to apply also to the employment of the workman in such other work. It is also material to point out that the Act contains no restriction of the term "employment" to employment for profit to the employer, and that, therefore, every gardener in the United Kingdom is entitled to its benefits. The incorporated Act of 1897, under certain restrictions fixes the employer with liability to pay compensation to a workman physically injured, or to the dependants of a workman killed by accident arising out of and in the course of his employment. The restrictions are, that the employer is not liable for any injury (1) not disabling the workman for at least two weeks from earning full wages, or (2) attributable to the serious and wilful misconduct of the workman. There are also important limits to the amounts recoverable, the workman being only entitled to receive compensation "where total or partial incapacity for work results from the injury, a weekly payment, during the incapacity after the second week, not exceeding fifty per cent. of his weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed £1," and the compensation to dependants of a workman in case of death not to exceed £300.

**Animals.**—The Wild Animals in Captivity Protection Act (No. 33, E.I.) makes it an offence by "wantonly or unreasonably" doing or omitting any act to cause any unnecessary suffering or cruelly to abuse,

(*h*) See *infra*, p. 131.

(*i*) 60 & 61 Vict. c. 37.

(*k*) 55 & 56 Vict. c. 31.



infuriate, tease, or terrify any captive "animal" or "animal" maimed, pinioned, or otherwise dealt with to prevent its escape from captivity, the term "animal" in the Act meaning any bird, beast, fish, or reptile not included in the existing Cruelty to Animals Acts, which continue entirely unrepealed. Those Acts, which are expressly confined to domestic animals, have been held to include decoy linnets, but not caged performing lions, tame seagulls, and unacclimatised parrots, and even wild rabbits netted and boxed up for nearly a week; but in giving judgment for the proprietor of the lions (whose evidence to rebut the charge of cruelty it had not been necessary to hear), the late Mr. Justice Cave observed:—

These Acts are of very modern date; and, no doubt, the public feeling which enabled them to be passed has been gradually accumulating and strengthening. It may be that Parliament at some future time will think fit to provide for the protection against cruel treatment of all wild animals kept in confinement; but at present it has not done so. (*l*)

The present Act carries out the above prognostication, and appears to apply to all animals not included in the earlier Acts, except men and insects. The Act does not apply to the permitted vivisection under the Act of 1876, (*m*) nor to Scotland, which has separate Acts of her own, and also, in burghs, an enactment by the wording of which, at any rate, insects are included.

**Arms.**—The Exportation of Arms Act (No. 44, U.K.), empowers the King to prohibit the exportation of arms, ammunition, military and naval stores, and "any article which his Majesty shall judge capable of being converted into or made useful in increasing the quantity of arms, etc., to any country or place" in a Royal Proclamation named "whenever the King shall judge the prohibition to be expedient to prevent the arms, etc., being used against his Majesty's subjects or forces, or against any forces in alliance with his Majesty's forces."

A proclamation prohibiting the exportation of arms and ammunition to China was issued on the day after the passing of the Act.

**Army, Navy, and Volunteers.**—The short annual Army Act (No. 5, B.E.), is continued and impliedly authorises a strength of 430,000; and the Reserve Forces Act (No. 42, B.E.), enacts that men in the second division of the first class of the Army Reserve shall be liable to be called out on permanent service, notwithstanding that directions have not been given for calling out the whole of the first division on such service, consequentially repealing a provision of the Reserve Forces Act, 1882, (*n*) to the contrary effect.

(*l*) *Harper v. Manks*, [1894] 2 Q. B. at p. 322.

(*m*) 39 & 40 Vict. c. 77.

(*n*) 45 & 46 Vict. c. 48.

The Electoral Disabilities (Military Service) Removal Act (No. 8, U.K.) removes the electoral disabilities which would otherwise attach to Reservists, Militiamen, Yeomen, and Volunteers in consequence of their absence on military service "during the continuance of the present war in South Africa." The ordinary law is that an elector cannot be registered as such, and therefore cannot vote, unless he has occupied premises within his electoral area for the whole period of twelve months preceding July 15 in the year in which registration takes place. The new Act directs that Reservists, Militiamen, Yeomen, and Volunteers shall not be disqualified for registration either as Parliamentary or local electors by having been absent on military service for any part of this qualifying period of twelve months, and that a person so absent shall not be disqualified by reason of his wife or children having received parochial relief during his absence. The claim of such a person to be registered as a lodger—which must be made every year, though by claiming before July 25 in any year after the first registration the lodger may, if he pleases, place himself in a position not to be so easily objected to—may be made by any other person on the lodger's behalf.

By the Members of Local Authorities Relief Act (No. 46, U.K.) an officer or soldier of the auxiliary or reserve forces on active service, or on service beyond the seas, is not by absence on that service to be disqualified or vacate his office as a county, borough, district, or parish councillor or guardian of the poor. The ordinary statutory disqualifications are for a county councillor six months', for a borough councillor three months', for a district councillor or guardian four months', and for a parish councillor six months' absence. The new Act removes the disqualification in the case of the favoured councillors without any limit of time.

The Police Reservists (Allowances) Act (No. 9, E.S.) enables police authorities, if they think fit, to grant to or for the wife or children of a police reservist called out for permanent service, or in the case of an unmarried man to or for the benefit of any person whom he is bound to maintain, and towards whose support he has regularly contributed, such an allowance as they may think equitable. The allowance, however, may not be made for more than a year, though it may be renewed for a further period, and is in no case to exceed the total weekly amount which the man was receiving from police funds when called out, or, if he be unmarried, eight shillings a week. If he be killed or disabled, the police authority have the same power of granting gratuities to him or his family as if he had continued in the police force, and if he returns to that force he is not to be a loser either in rank or pay. Allowances or gratuities granted before the passing of



the Act (which passed on May 25) are confirmed, "and any such allowance may be continued until the expiration of two months from the passing of this Act and no longer, unless it is in conformity with the passing of this Act."

The short Naval Reserve (Mobilisation) Act, (No. 17, B.E.) amends the Royal Naval Reserve Volunteer Act, 1859, (*o*) by enabling the Admiralty to call out men as they want them, and the much longer Naval Reserve Act (No. 53, B.E.) was explained to have for its object the formation of a new reserve of 15,000 men from men who had served twelve years in the Navy. The Act of 1859 allows the keeping up of not more than 30,000 men by voluntary enlistment from among seafaring men and others who may be deemed suitable for the services in which such volunteers may be employed. The pressing of men for the Navy, though not resorted to since the close of the long war, appears to be still lawful.

The Volunteer Act (No. 39, E.S.), allows Volunteers to be called out "in case of imminent national danger or of great emergency," and not only "in a case of actual or apprehended invasion of the United Kingdom"—as was provided by the Volunteer Act, 1863 (*p*)—the former phrase being verbally substituted for the latter. It also becomes lawful for his Majesty to accept the offer of any Volunteer to the liability to be called out for actual military service at any time for coast defence at such places in Great Britain as may be specified in his agreement.

The Military Lands Act (No. 56, U.K.) enables such county or borough councils as hold land for Volunteer corps to let the land on lease to any such corps for ninety-nine years, or any less term, and adds that the power of a Volunteer corps to borrow, and of the Public Works Loan Commissioners to lend, shall extend to the borrowing and lending on any such lease. If the corps be disbanded, the lease is to vest in the Secretary of State, subject to repayment of the money borrowed. The Act also regulates the use for naval purposes of land abutting on the sea or tidal waters under the joint superintendence of the Admiralty and the Commissioners of Woods with full regard to the rights of owners to compensation for "injuriously affecting" them under the compulsory clauses of the Land Clauses Acts.

**Commonwealth of Australia.**—The Commonwealth of Australia Constitution Act (No. 12) enabled her late Majesty the Queen to proclaim the union of the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, "and also, if her Majesty was satisfied that the people of Western Australia"—whose agreement had recently been signified by a popular vote—"had agreed thereto, of

(*o*) 22 & 23 Vict. c. 40.

(*p*) 26 & 27 Vict. c. 65.



Western Australia," in a Federal "Commonwealth of Australia." A Royal Proclamation of the union of all the six colonies, to commence from January 1 then next, was issued on September 17, 1900, and published in the *London Gazette* of the following day.

The Act (which may, with great advantage, be compared with the successful British North America Act of 1867 (*q*) and the abortive and expired South Africa Act of 1877 (*r*)) gives the new Commonwealth a Constitution in eight chapters, containing one hundred and twenty-eight articles amongst them. The legislative power is vested in a Parliament consisting of the King, represented by a Governor-General, a Senate, and a House of Representatives—the bi-cameral system being adopted, in analogy to that prevailing in every country of the world (except Greece) in which a House of popularly elected Representatives exists (*s*).

The Senate is to be ordinarily composed of six Senators for each State directly chosen by the people of the State voting as one electorate, the method of election to be as prescribed at some future date by the Commonwealth Parliament uniformly, but until then as prescribed by the House of Representatives of each State for the election of that House. Senators are chosen for six years and divided into two classes, of which the first class retires at the end of the first three years and the second class at the end of the second three years. The place of a Senator becomes vacant by absence for two consecutive months without leave of the Senate. The quorum is one-third of the whole number, and questions are decided by a majority of votes. The House of Representatives is composed of members directly chosen by the people, and their number is as nearly as practicable twice the number of the Senators and varying with the population, it being specially provided, however, that at the first election twenty-three members were to be chosen for New South Wales, twenty for Victoria, eight for Queensland, six for South Australia, and five for Tasmania. The House of Representatives is to continue for three years and no longer, but may be sooner dissolved by the Governor-General. Till other provision is made by the Commonwealth Parliament, each State is to be one electorate, and the qualification of electors is to be that in force for each State. As to qualification of members; a member must be at least twenty-one years old and himself an elector or qualified to become such, and also a resident within the limits of the Commonwealth of three years' standing. He must also be a subject of the King, either natural-born or for at least five years naturalised.

(*q*) 30 & 31 Vict. c. 3.

(*r*) 40 & 41 Vict. c. 47.

(*s*) As to the constitution of second chambers in Foreign States see Parliamentary Paper, 1907, Cd. 3824.

A member of either House is disqualified for membership of the other, receives an allowance of £400 per annum, and is or becomes disqualified for membership by holding any office of profit under the Crown, or any pension payable out of the revenues of the Commonwealth, or having any pecuniary interest in any agreement with its public service otherwise than as a member of an incorporated company consisting of more than twenty-five persons. There is no express disqualification of women either as electors or members, and women, as they already possess the Parliamentary franchise in South Australia, are entitled to vote in that electoral area.

The powers of the Commonwealth Parliament are set out under thirty-nine heads, including powers as to

Trade and commerce with other countries and among the States; bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth; quarantine; currency, coinage, and legal tender; weights and measures; copyrights, patents of inventions and designs, and trade marks; naturalisation and aliens; marriage; divorce and matrimonial causes, and in relation thereto parental rights, and the custody and guardianship of infants; invalid and old age pensions; the people of any race, other than the aboriginal race in any State for whom it is deemed necessary to make special laws; immigration and emigration; the influx of criminals; external affairs.

The Parliament is also directed to fix the seat of government subject to the limitation that it must (1) be situate in New South Wales, and (2) be distant at least a hundred miles from Sydney. Money Bills are not to originate in the Senate, and appropriation Bills and taxing Bills are only to deal with appropriation and taxation. Disagreements between the two Houses, if consequent upon a Senatorial rejection of a Representative Bill, may be followed by a simultaneous dissolution, and if after such dissolution the House of Representatives passes the proposed law and the Senate fails to pass it, the Governor-General may convene a joint sitting of the two Houses, at which the measure may be carried by an absolute majority of the total number of both.

When a proposed law is presented to the Governor-General for the King's assent, he may either assent in the King's name, or withhold assent, or reserve the law for the King's pleasure; the King may disallow any law within one year from the Governor-General's assent; and a proposed law reserved for the King's pleasure is not to have any force unless within two years from the day on which it was presented to the Governor-General for the King's assent, the Governor-General makes known, by speech or message to each of the Houses of Parliament, or by proclamation, that it has received the King's assent.



The executive power is vested in the King, and exercisable by the Governor-General with the advice of a Federal Executive Council holding office during the Governor-General's pleasure, up to the number of seven sitting in one or other House of Parliament, and receiving amongst them £12,000 a year.

The judicial power of the Commonwealth is vested in a High Court of Australia, to consist of a Chief Justice and so many other judges, not less than two, as the Parliament prescribes, and in such other Courts as the Parliament creates. The judges are to be appointed by the Governor-General in Council (no disqualification for judgeship by age, professional standing, or even nationality being named), and removable by him only on address from both Houses of Parliament in the same Session.

Appeal to the High Court is dealt with by s. 73, appeal from it by s. 74, both of them enactments not quite easy to understand, and to be read with the old Common Law rule that from every Court in every British colony there lies an appeal to the British Sovereign in Council, except so far as it is taken away or limited by express Statute. S. 73 gives the High Court jurisdiction to hear and determine, with such exceptions as the Parliament prescribes (not preventing any appeal from the Supreme Court of a State in which at the establishment of the Commonwealth an appeal lies from such Court to the King in Council), appeals from all judgments and sentences of any Court of any State from which at the establishment of the Commonwealth an appeal lies to the King in Council. S. 74 bars any appeal from the High Court to the King in Council upon any question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State unless the High Court certify that the matter is proper for such appeal (in which case an appeal lies without further leave), but expressly declares that the Constitution shall not otherwise impair any right which the King may be pleased to exercise to grant special right of appeal from the High Court to his Majesty in Council, adding, however, that the Parliament may limit the matters in which such leave may be asked, but that proposed laws containing any such limitation shall be reserved by the Governor-General for his Majesty's pleasure.

Uniform duties are to be imposed within two years from the date of the Act, but the Constitution does not prohibit a State from granting any aid to, or bounty on, mining for gold, silver, or other metals, nor from granting, with the consent of both Houses of the Commonwealth Parliament, any aid to, or bounty on, the production or export of goods. All State laws are to remain in force if consistent with the laws of the Commonwealth, but the laws of the Commonwealth are to prevail in case of inconsistency. The States are not to raise military or naval forces, or coin money, or make anything but gold and silver coin a legal



tender for the payment of debts, and the Commonwealth is not to make any law for establishing any religion or imposing any religious observance or prohibiting the free exercise of any religion or religious test for qualification for office. New States may be admitted into the Commonwealth by the Parliament, and the Governor-General may be authorised by the King to appoint deputies. Lastly, the Constitution may be altered by law passed by an absolute majority of both Houses to be submitted in not less than two nor more than six months to popular vote, to be taken in such manner as the Parliament prescribes.

**Burial.**—The Burial Act (No. 15, E.) is founded on a report of 1898 of a Select Committee of the House of Commons to the effect that the law of burial is unduly complex and some of its provisions unjust; that its machinery is cumbrous and defective; that its operation has been a frequent cause of controversy and sometimes fraught with deplorable consequences to the peace of the localities concerned; and that the Burial Acts ought to be consolidated, simplified, and amended. The new Act, which came into operation on January 1st and repeals wholly or in part twenty-two sections of six of the twenty-two previous Statutes (mainly adoptive only) dating from 1852, (*t*) to a great extent carries out in ten sections the fourteen recommendations of the Committee in respect of burial-grounds provided by local authorities, burial in churchyards not being touched except by a slight amendment of the Act of 1880, (*u*) by which burial without a Church of England service was first authorised. The Home Office is empowered to approve partial consecration, and to direct any person to hold an inquiry into any matter relating to consecration, to building of chapels, or to any fees payable to ministers of religion, ecclesiastical officers, and sextons in connection therewith. Numerous administrative powers under the existing Acts are transferred from the Home Office to the Local Government Board.

Consecration itself is regulated as follows: The burial authority may apply to the Bishop of the diocese to consecrate any portion of a ground approved by the Home Office. If they do not so apply, and the Home Office is satisfied that a reasonable number of the inhabitants of the burial district desire that a portion of the ground be consecrated, and that the consecration fees are safe, the Home Office may make the application “and the Bishop may consecrate accordingly,” it being made “the duty of the burial authority to make such arrangements as may be necessary for the consecration.” It may be observed here that there is no Prayer Book or other legally prescribed form of consecration service. That in general use from the reign of Queen

(*t*) 15 & 16 Vict. c. 85.

(*u*) 43 & 44 Vict. c. 41.

Anne downwards(*x*) was accepted by both Houses of Convocation, but did not receive the Royal assent. Each Bishop is at liberty to use a form of his own, an appeal from a refusal to consecrate lying to the Archbishop. The Consecration Acts of 1867(*y*) and 1868(*z*) apply only to churchyards and burial grounds attached to "union houses." The Act also provides that—

A burial authority may at their own cost erect on any part of their burial-ground, which is not consecrated or set apart for the use of any particular denomination, any chapel which they consider necessary for the due performance of funeral services, but any chapel so erected after the passing of this Act shall not be consecrated or reserved for the exclusive use of any denomination.

A burial authority may, at the request and cost of the residents within their district belonging to any particular denomination, erect, furnish, and maintain a chapel for funeral services according to the rites of that denomination on the ground appropriated to their use.

No fees are to be payable to any incumbent for burial in a burial-ground except for services rendered or during the incumbencies of existing incumbents, or in any case after the expiration of fifteen years, and the existing fees may be commuted with the assistance of the Ecclesiastical Commissioners. Incumbents of parishes within burial districts provided with burial-grounds under the Act of 1879(*a*) (Marten's Act) have the same obligation to bury their parishioners and persons dying in their parish as they have already under the Burial Acts, and "boundary fences" are no longer to be erected in burial-grounds provided under the Act of 1879. The notice of intention to bury is to be given at such time and to such person as the burial authority may direct, and so much of the Act of 1880(*b*) as requires forty-eight hours' notice to be given in any such case is repealed.

**Census.**—The Census (Great Britain) Act (No. 4, E.S.) directed that the British decennial census, first taken in 1801, should be taken of all persons who abode in any house in Great Britain on the night of Sunday, March 31st last, the Irish census being provided for by a separate Census Act (Ireland) (No. 6) fixing the same census day. The taking of the census was superintended by the Local Government Board, the Registrar-General issuing the necessary forms and instructions, and the Treasury paying the expenses. The census papers were left by the enumerators—and overseers of the poor and relieving officers were bound to act as enumerators if so required by the Local

(*x*) See Wilkins's "Concilia," vol. iv. at p. 609.

(*y*) 30 & 31 Vict. c. 133.

(*a*) 42 & 43 Vict. c. 31.

(*z*) 31 & 32 Vict. c. 47.

(*b*) 43 & 44 Vict. c. 41.



Government Board—at each dwelling-house in the course of the week ending on Saturday, March 30th, and called for on Monday, April 1st, when the occupier had to deliver them filled up with the name, sex, age, occupation, condition as to marriage, relation to head of family, birth-place, and in the case of birth abroad the nationality of every living person who abode in his house on March 31st. There had also to be statements (1) whether any such person was blind, or deaf and dumb, or imbecile or lunatic; (2) of the number of rooms, if less than five, occupied by the occupier; and (3) in Wales or Monmouthshire, whether any such person “speaks English only or Welsh only or both English and Welsh.” The Registrar-General had to obtain returns of persons travelling or on shipboard or otherwise not abiding in houses. There were the usual penalties on defaulting enumerators and occupiers refusing to fill up census papers, and any person “employed in taking the census” communicating without lawful authority any information acquired in the course of his employment was newly declared to be guilty of a breach of official trust, punishable by fine or imprisonment, or both.

**Colonies.**—The Colonial Solicitors Act (No. 14, B.E.) enacts that a colonial solicitor who has been in practice for not less than three years may, on giving due notice and proof of his qualifications and good character, and either on passing an examination or in certain cases without examination, and either after service of articles during a certain period or without such service, be admitted a solicitor in England, Scotland, or Ireland, or any of the three countries to the exclusion of either or both of the others, on payment of stamp duties and fees. The Act repeals prior Acts of 1857, (*c*) 1874, (*d*) and 1884 (*e*) to a similar effect, and, like those Acts, requires an Order in Council not only to bring it into operation, but to fill in details. The Order may be made when his Majesty the King in Council is satisfied, “on the report of a Secretary of State,” as respects a colonial Court—

- (1) That its regulations respecting the admission of solicitors are such as to secure their proper qualifications and competency; and
- (2) That by the law of the colony solicitors here will be admitted to be solicitors there, “on terms as favourable as those on which it is proposed to admit” them to be solicitors here.

The Act came into operation on January 1, 1901, and Orders in Council under it have been issued (*f*).

(*c*) 20 & 21 Vict. c. 39.

(*d*) 37 & 38 Vict. c. 41.

(*e*) 47 & 48 Vict. c. 24.

(*f*) See “Statutory Rules and Orders Revised, 1904,” vol. xi. tit. “Solicitor, Colonies,” p. 9, and Index to Statutory Rules and Orders in force on December 31, 1906.



The Colonial Stock Act (No. 62, B.E.) abolishes, so far as loans effected before the passing of the Act are concerned, the necessity imposed by the Colonial Stocks Act of 1877 (*g*) of stating in the declaration registered with the Imperial revenue authorities by colonial authorities issuing a loan that the revenues of the colony alone are reliable in respect of the stock and the dividend thereon, but does not in any way point to any change as regards the security for colonial loans. The act also greatly increases the powers of trustees to invest in colonial stock. Before its passing, trustees could not invest in any such stock unless (as has of late years become frequently the case) they were expressly authorised by the instruments of trust to invest therein. From the long list of trustees' investments provided by the Trustee Act of 1893 (*h*) all colonial stocks were excluded. The new Act provides that the securities in which a trustee may invest under that Act shall include any colonial stock registered in the United Kingdom "with respect to which there have been observed such conditions, if any, as the Treasury may by order notified in the *London Gazette* prescribe," and the Treasury is directed to keep and publish "in the *London and Edinburgh Gazettes*, and in such other manner as may give the public full information on the subject," a list of colonial stock in respect of which the provisions of the Act "are for the time being complied with." The Act passed on August 8, and the Treasury conditions (*i*) are—

- (1) That the colony shall provide by legislation for payment out of the colonial revenues of any sums payable to stockholders under any judgment or order of a Court of the United Kingdom;
- (2) That the colony shall satisfy the Treasury that adequate funds will be available in the United Kingdom to meet any such judgment or order; and
- (3) That "the colonial Government shall place on record a formal expression of their opinion that any colonial legislation which appears to the Imperial Government to alter any of the provisions affecting the stock to the injury of the stock holder, or to involve a departure from the original contract in regard to the stock, would properly be dissolved."

**Companies.**—The Companies Act (No. 48, U.K.) (*k*) repeals only four sections wholly and three partially of the Acts of 1862 (*l*) and 1867, (*m*) and leaves the remaining Acts untouched. The chief subjects

(*g*) 40 & 41 Vict. c. 59.

(*h*) 56 & 57 Vict. c. 53.

(*i*) Statutory Rules and Orders Revised, 1904, vol. ii. tit. "Colonial Stock," p. 1.

(*k*) See *infra*, p. 142. The law on the subject was consolidated in 1908.

(*l*) 25 & 26 Vict. c. 89.

(*m*) 30 & 31 Vict. c. 131.

dealt with are the appointment and qualification of directors, allotment of shares, and commencement of business, underwriting, contents of prospectus, the first meeting, the registration of mortgages, the annual summary accounts, and the appointment, remuneration, and duties of auditors. The Act applies to existing as well as to future companies, except where it is expressed to apply to future companies only, but in no case applies to the railway and other statutory companies outside the great Act of 1862. The following is an account of the Act under its chief heads:—

*Directors.*—No person may be appointed a director by articles of association, or named director by a prospectus, unless before registration of the articles or publication of the prospectus he has consented in writing to act, and either signed the memorandum of association for a number of shares not less than his qualification shares, if any (for there will still be no statutory obligation to take any shares except as provided by articles), or signed and filed with the Registrar of Joint Stock Companies a contract in writing to take from the company and pay for his qualification shares, if any, and a list of consenting directors is to be delivered to the registrar.

The foregoing provisions do not apply to existing companies or to private companies, or to any prospectus issued by a company more than one year after becoming entitled to commence business. But, in every case in which a specified share qualification is required, every unqualified director must obtain his qualification within two months after appointment or such shorter time as may be fixed by the company, under pain of vacating his office and becoming liable to a fine of £5 for every day he acts.

*Allotment.*—No allotment of any share capital of a company offered to the public for subscription may be made unless there has been subscribed either—

- (1) The amount fixed by the memorandum or articles named in the prospectus as the minimum on which allotment may be proceeded to; or
- (2) The whole share capital offered.

If these and other conditions be not complied with at the end of forty days after prospectus issued, the money of the subscribers is to be returned to them without interest, the directors (with exceptions for proved innocence) becoming liable to repay it with interest at the rate of five per cent. per annum after the expiration of forty-eight days. Any waiver of these conditions is to be void, but the conditions do not apply to any allotment subsequent to the first.

*Underwriting and Brokerage.*—The power of any company “to pay such brokerage as it has been heretofore lawful for a company to pay,”



and commissions, discounts, and the like are legalised to the following extent and no further :—

Upon any offer of shares to the public for subscription, it shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission and the amount of rate per cent. of the commissions paid or agreed to be paid are respectively authorised by the articles of association and disclosed in the prospectus, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised.

“Save as aforesaid” no company is to apply any of its shares or capital money either directly or indirectly in payment of any commission or allowance to any subscriber for shares.

*Prospectus.*—The term “prospectus” means any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares, debentures, or debenture stock. Every such prospectus is to be dated, signed by every director or proposed director, or his agent authorised in writing, and filed with the Registrar of Joint Stock Companies, and state that it has been so filed. Besides an express waiver of the conditions being expressly declared void, any allotment in contravention of them is voidable at the instance of the applicant within a month after the first meeting of the company, and any contravening director becomes liable to compensate both the company and the allottee for any injury resulting from the contravention. Any future company, unless it be a private one, may neither commence business nor borrow money unless—

- (1) Shares payable in cash have been allotted up to at least the amount of minimum subscription ;
- (2) Every director has paid on all shares for which he is liable to pay in cash “a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription ; and
- (3) A statutory declaration that these conditions have been complied with has been filed.”

A contravention of these provisions—which, however, are not to prevent the simultaneous offer of both shares and debentures—is to entail liability to a daily fine of £50 upon the person responsible. In order that investors may have an opportunity of knowing who their co-partners are, a detailed return of all allotments is to be filed with the registrar within a month after allotment, showing, amongst other things, the history of shares allotted otherwise than for cash.



S. 10 of the Act, which takes up two pages of the official copy, replaces in eight sub-sections, of which the first is sub-divided into thirteen paragraphs, the short but much-vexed s. 38 of the Act of 1867 (*n*)—passed in a time of commercial stress and panic—which enacted that every prospectus not stating every contract should be deemed fraudulent. The main particulars which must now be stated in every prospectus by or on behalf of a company or by or on behalf of every person who is or has been engaged or interested in the formation of a company, are these:—The contents of the memorandum of association, the amount of a director's qualification, if any, the minimum subscription on which allotment will be proceeded to, the amounts (1) of commission paid or payable, (2) of preliminary expenses, and (3) of payments to promoters, the dates of and parties to every material contract except ordinary business contracts and contracts more than three years old, and full particulars of the interest of every director in the promotion of the company, “with a statement of all sums paid or agreed to be paid to him in cash or shares by any persons either to qualify him as a director or otherwise for services rendered by him in connection with the formation of the company.” The section applies to existing companies with a few unimportant savings, and in newspaper advertisements the obligation to specify the contents of the memorandum of association is dispensed with, but the ingenious waiver clauses which have so long played a doubtful part in Company Law are swept away for ever, as far as words can sweep them, as follows:—

Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

The honest director, or other person responsible for a prospectus not complying with the multitudinous requirements of the new Act, is not to incur any liability by reason of the non-compliance if he proves (1) that he was not cognisant of any matter not disclosed, or (2) that the non-compliance arose from an honest mistake of fact, while the burden of proof is shifted in the case of non-disclosure of the character of a director's interest. In such a case no liability is to be incurred unless knowledge of the matters not disclosed be proved. Subject to the above exceptions, the contravener is left to the tender mercies of “the general law” (see *e.g.* the Directors' Liability Act of 1890 (*o*)), “apart from this section”—which provides no special penalties for non-compliance with it—with the legal result, it is conceived, of rendering the offender liable, as for a Common Law misdemeanour, to be punished

(*n*) 30 & 31 Vict. c. 131.

(*o*) 53 & 54 Vict. c. 64.

upon conviction on indictment by imprisonment or fine, or both, limited in extent and amount by the discretion only of the Court trying the indictment. (*p*)

*Statutory Meeting.*—Every future company must, within three months after becoming entitled to commence business, hold a meeting of its members, who are to have had forwarded to them at least seven days before the meeting a report of the numbers of shares allotted, distinguishing shares allotted for cash and shares not so allotted, an abstract of receipts and payments, “the particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification”; and a list of the names and addresses of the members and the number of shares held by each member is to be produced at the commencement of the meeting and open to inspection by members during its continuance. S. 39 of the Act of 1862, (*q*) which this takes the place of, provided for the holding of a statutory meeting within four months after the registration, but was silent on all the points now brought into prominence, with the inevitable consequence, that “statutory meetings” have been hitherto mostly formal. Shareholders now will have every opportunity of testing the value of new investments. It may perhaps be suggested that all speakers at statutory meetings might with advantage state their names and the amounts and nature of their holdings, and even, in some cases, whether they are beneficial or fiduciary owners of them—the Companies Act forbidding a company to recognise trusts upon its register.

*Extraordinary Meetings.*—The directors of all companies, existing as well as future, become bound, notwithstanding anything in any regulations of a company, on the requisition of the holders of not less than one-tenth of the issued capital of the company upon which all calls due have been paid, to call an extraordinary general meeting, the requisitionists themselves or a majority of them in value being empowered to convene the meeting in event of the directors not convening it within twenty-one days after deposit of the requisition at the office of the company. It is believed that varying provisions of a similar character to these are more often than not to be found in existing articles of association, which, it is conceived, may operate in addition to, though not in contravention of, them.

*Registration of Mortgages.*—Future mortgages and charges, whether by existing or future companies, of almost every kind (including the mortgage of uncalled capital), become void against liquidators and creditors unless filed with the registrar within twenty-one days after their

(*p*) See *Reg. v. Dunn* (1847), 12 Q. B. 1041; *Reg. v. Hall*, [1891] 1 Q. B. 747.

(*q*) 25 & 26 Vict. c. 89.



creation, and a register is to be kept open to inspection by any person, stating the date of creation, the amount secured, and the names of the parties entitled, special provisions being made for the issue of a series of debentures, the holders of which rank *pari passu*. The companies become bound to register and consequently to supply the registrar with the necessary particulars, but any mortgage or charge requiring registration may be registered on the application of any person interested therein, and copies of all instruments requiring registration are to be kept at the office of a company, there open to inspection by the members and creditors of the company. This greatly extends—but for the future only—a still unrepealed provision of the Act of 1862 (*r*) by which registers of mortgages open to inspection are directed to be kept by the Registrar of Joint Stock Companies, inasmuch as that provision allows inspection only by existing members or creditors. The substituted provision allows inspection in anticipation of future as well as in protection of existing investments, such, for instance, as before now have been made by a shareholder who discovers when it is too late that the principal creditor of his company is the vendor who sold his business to it and took debentures in payment.

*Annual Summary.*—The annual summary of a company's position and membership, which all companies having a capital divided into shares are directed by the Act of 1862 to forward to the Registrar of Joint Stock Companies, is directed to contain, in addition to the numerous particulars already required, (1) "the total amount of debt due from the company in respect of all mortgages and charges which require registration under this Act or which would require registration if created after the commencement of this Act, and (2) the names and addresses of the directors."

*Audit.*—Every company, whether existing or future, becomes bound to appoint an auditor or auditors at each annual general meeting. If no appointment be then made, the Board of Trade may appoint an auditor on the application of any member. The reports of the auditors are to be read before the companies in general meeting. Similar provisions, varying amongst themselves, are more often than not to be found in articles of association, and these may, it is conceived, supplement the Act, but cannot contravene it. Except in the case of banking companies, the Statute Law has not hitherto required any audit.

*Conversion of Stock into Shares.*—The Act of 1862 (*s*) allows the conversion of shares into stock. The new Act allows a reconversion of stock into shares—a provision which may possibly be found more useful in inducing the employees of a company to become partners

(*r*) 25 & 26 Vict. c. 89.

(*s*) *Ibid.*



with the shareholders than the power of offering small limited portions of stock.

**County Courts.**—The County Courts (Investment) Act (No. 47, E.) regulates the investment of money paid into court and ordered by the judge to be invested for the benefit of any infant or lunatic.

**Education.**—The Elementary Education Act (No. 53, E.)<sup>(t)</sup> deals with seven distinct subjects. “Average attendance” for the purpose of the fee grant under the Act of 1891<sup>(u)</sup> is to be calculated in accordance with the minutes of the Board of Education for the time being, instead of the minutes for 1891, so as to invest the calculation of “average attendance” with greater elasticity. Poor Law guardians are empowered to contribute towards such of the expenses of “providing, maintaining, or enlarging” any public elementary school (whether voluntary or board) as are incurred in respect of pauper scholars. Parishes having school boards are exempted from contributing to the expenses incurred by any district council in the education of blind and deaf children. Local authorities who procure the commitment of a child to an industrial school may pay the expenses of the conveyance of the child to and from the school. The joint managers of joint industrial schools may be treated as a single school board in respect of audit. Bylaws requiring compulsory school attendance are to apply to children under fourteen instead of children under thirteen, the maximum penalty for breach of them is raised from five to twenty shillings, and the sanction of them by the Education Board is substituted for that of the Sovereign in Council. Finally, three hundred and fifty attendances are substituted for two hundred and fifty as the standard of due attendance at a certified efficient school.

**Land.**—The Land Registry (New Buildings) Act (No. 19, E.) enables the Commissioners of Works to acquire certain lands and buildings for the purpose of the Land Registry Office “and such other public offices as may be determined,” the spending power of the Treasury being limited to £265,000.

The Land Charges Act (No. 26, E.) transfers to the Land Registry Office, by virtue of an order of the Lord Chancellor made shortly after its passing, the business of the Registrar of Judgments hitherto conducted in the central office of the Supreme Court, with a saving, however, for Scotch and Irish judgments. It is also provided that no judgment shall operate as a charge on land until a writ or order to enforce it has been registered in the manner specially provided by the Land Charges Registration and Searches Act, 1888,<sup>(x)</sup> which Statute is to a slight extent repealed, together with eight other Statutes repealed to greater extent.

<sup>(t)</sup> See *infra*, p. 146.

<sup>(u)</sup> 54 & 55 Vict. c. 56.

<sup>(x)</sup> 51 & 52 Vict. c. 51.

**Loans for Public Works.**—The Public Works Loans Act (No. 36, U.K.) appoints eighteen Commissioners to be Commissioners under the Public Works Loans Act, 1875, (*y*) for a further period of five years (*z*). Their term of office would otherwise have expired in April, 1901. The Act of 1875, consolidating a number of Acts from 1853 downwards, enables Commissioners to lend large sums of public money for the purposes of harbours and other purposes therein specified, and the Commissioners are by the new Act empowered, though not required, to lend an additional seven millions or any less sum for those purposes.

**Local Government.**—The County Councils Elections Amendment Act (No. 13, E.) enacts that in any year which is not the year of election of county councillors the day of election of chairman and of holding a quarterly meeting may be such day of March, April, or May as the county council shall determine, instead of one of the days of March.

The District Councillors and Guardians (Term of Office) Act (No. 16, E.) empowers county and county borough councils to rescind any of their orders, made or to be made, with respect to the retirement of members of urban or rural district councils or of boards of guardians, the allusion being to those provisions of the Local Government Act, 1894, (*a*) under which all these ladies and gentlemen may by order of the county councils, made on certain requests, be compelled to retire all together on April 15th in every third year of office, instead of in the proportion of one-third of their number at the end of each year.

**London.**—The London County Council Electors' Qualification Act (No. 29, E.), "to assimilate the County Council and Borough Council franchise in London," enacts that a parochial elector shall be entitled to vote at the election of a county councillor for the Administrative County of London in the same manner as a county elector and subject to the same provisions.

**Mines.**—The Mines (Prohibition of Child Labour Underground) Act (No. 21, U.K.) prohibits the employment in any mine below ground of any boy under the age of thirteen, the previous prohibition having been limited to the age of twelve only; but the new limit does not apply to any boy lawfully employed in any mine below ground before the passing of the Act on July 30, 1900.

**Money-Lending.**—The Money-Lenders Act (No. 51, U.K.), which is founded on a very severe report of the House of Commons Committee of 1898, (*b*) defines a money-lender as including "every person whose

(*y*) 38 & 39 Vict. c. 89.

(*z*) This Act has been continued for a further period of five years by 5 Edw. VII. c. 22.

(*a*) 56 & 57 Vict. c. 73.

(*b*) This Committee unanimously came to the conclusion "that the system of money-lending by professional money-lenders at high rates of interest" was productive of crime, bankruptcy, unfair advantage over other creditors of the borrower, extortion



business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business." The definition, however, does not include pawnbrokers or registered friendly, building, or loan societies or corporations empowered by special Act of Parliament to lend money, or "any person *bonâ fide* carrying on the business of banking or insurance or *bonâ fide* carrying on any business not having for its primary object the lending of money, in the course of which, and for the purposes whereof, he lends money," or any corporation exempted from registration under the Act by the Board of Trade, pursuant to regulations of that Board. The Act came into operation on November 1, 1900. Money-lenders within the meaning of the Act are subjected (1) to the liability to have their contracts judicially varied in the interest of borrowers, and (2) to the obligation to register themselves as professional money-lenders. Where a borrower is sued by a money-lender for a loan, and there is evidence which satisfies a Court either that the interest or that the charge for expenses is excessive, and that, in either case, the transaction is harsh and unconscionable, "or is otherwise such that a Court of Equity would give relief" (as, *e.g.*, where the borrower had no independent professional assistance), the Court may reopen the transaction and relieve the borrower from payment of any sum in excess of that adjudged to be reasonable, may order the money-lender to repay any such excess, may set aside or alter any security or agreement, and if the money-lender has parted with the security, may order him to indemnify the borrower, who on his side may also initiate proceedings and thereby obtain the same judicial relief as if he had waited to be sued. If the money-lender essays to prove for his loan in bankruptcy, he may be met by an exercise of similar judicial powers by the bankruptcy judge. None of these provisions may be construed to affect "the rights of any *bonâ fide* assignee or holder for value without notice," but with this single exception all the additions to the main provisions of the Act tell in favour of the borrower rather than against him.

Registration of the money-lender in his own or usual trade name and of the address or addresses at which he carries on business is to be effected at an office provided by the Inland Revenue Commissioners, who may, subject to the approval of the Treasury, make regulations as to registration, the particulars to be registered, and inspection of the register. Failure to register or lending without

from the borrower's family and friends, and other serious injuries to the community, and which stated that "although your Committee are satisfied that the system is sometimes honestly conducted, they are of opinion that only in rare cases is a person benefited by a loan obtained from a professional money-lender and that the evil attendant upon the system far outweighs the good."



registration is to entail a liability to a fine of £100, summarily recoverable, any second or subsequent conviction entailing a liability to three months' imprisonment with hard labour, but a prosecution for merely failing to register is only to be instituted with the consent of a law officer of the Crown. The first registration, which is compulsory, will cease to be effective at the end of three years. Subsequent renewals, which will be permissive, will have effect for three years from the date of the renewal. Any money-lender fraudulently inducing or attempting to induce any person to borrow money of him is declared to be guilty of a misdemeanour and liable on indictment to two years' imprisonment with hard labour, or to a fine of £500, or both. Finally, where in proceedings under the Betting and Loans (Infants) Act, 1892, (c) for circularising invitations to borrow it is proved that the invitation was sent to an infant, "the person charged" (who need not be a money-lender within the Act) is to be deemed to have known that the person to whom the document was sent was an infant, unless he proves that he had reasonable ground for believing the infant to be of full age.

Regulations of great importance were issued by the Inland Revenue Commissioners in September, 1900, giving the money-lenders one month, from November 15, 1900, and no more, to register in, and establishing registries in London, Edinburgh, and Dublin, in each of which an alphabetical index is to be kept for public inspection, of all money-lenders who have made returns for registration; and Board of Trade regulations as to the exemption of bodies corporate from the provisions of the Act were issued in the following month. (d)

**Monuments.**—The Ancient Monuments Act (No. 34, E.S.) defines a monument as meaning "any structure, erection, or monument of historic or architectural interest," and unless, which is doubtful, the word "ancient" can be read into this definition from the short title, its application is not confined to old ruins. It says that "where the Commissioners of Works are of opinion"—an expression of unrestricted power—"that the preservation of any monument is a matter of public interest by reason of the historic, traditional, or artistic interest attaching thereto, they may, at the request of the owner, consent to become the guardians thereof." County councils are also empowered either to purchase or, at the request of the owners, become the guardians of monuments and to maintain them out of county funds. Both the Commissioners of Works and the county councils may receive voluntary contributions towards maintenance and management, and the public are to have access to all monuments of which either the Commissioners

(c) 55 & 56 Vict. c. 4.

(d) For the Inland Revenue and Board of Trade regulations, see "Statutory Rules and Orders Revised," 1904, vol. viii. tit. "Moneylender," p. 1.

of Works or any county council are the owners or guardians, "but where they are guardians only, with the consent of the owner of the monument, at such times and under such regulations as the Commissioners or council shall prescribe." The Act is to be construed as one with the Ancient Monuments Act, 1882, (*e*) which comprised only "the group of stones known as Stonehenge" and twenty-eight other specified monuments in England, "a group of remains and pillars on a haugh at Clava on the banks of the Nairn," and twenty others in Scotland, and "the stone monument at Ballyna," and eighteen others in Ireland—with power, however, to the Queen in Council to add to any of the three lists. The wide general terms of the new Act, which does not apply to Ireland, that sister country having already a comprehensive Statute of her own in the Ancient Monument Protection (Ireland) Act, 1892, are not a little surprising. There is no exception for ecclesiastical buildings, the only expressed exception being that the Act shall not authorise the Commissioners of Works to become the guardians of any structure which is occupied as a dwelling-place by any person other than a person employed as the caretaker thereof and his family. An incorporated incorporation of the Land Clauses Act has the effect of enabling tenants for life, corporations, and other owners under disability to sell their monuments.

**Parliamentary and Municipal Elections.**—Incredible as it may seem, the Ballot Act of 1872 (*f*) is temporary only, and has had to be annually renewed since 1880, when the seven years for which it was originally enacted came to an end.

The numerous Corrupt Practices Acts are also of a temporary character, and so is the Parliamentary Elections (Returning Officers) Act of 1875, (*g*) with its three amending enactments. The annual Expiring Laws Continuance Act (No. 37, U.K.) directs that eighty temporary Acts, including these all-important enactments, "shall be continued until December 31, 1901, and shall then expire, unless further continued."

**Poor Law.**—The Poor Removal Act (No. 23, E.I.), which passed through both Houses of Parliament without amendment, confers on Irish paupers that status of irremovability by five years' residence in England which the Union Chargeability Act of 1865, (*h*) extending the less liberal provisions of Acts of 1846 (*i*) and 1861, (*j*) confers on English paupers by five years' parochial residence, the law now being that "a person who has resided continuously for five years in England shall not thereafter be removable to Ireland under the Acts" (see, *e.g.*, the

(*e*) 45 & 46 Vict. c. 73.

(*g*) 9 & 10 Vict. c. 66.

(*i*) 28 & 29 Vict. c. 79.

(*f*) 38 & 39 Vict. c. 84.

(*h*) 35 & 36 Vict. c. 33.

(*j*) 24 & 25 Vict. c. 76.



Poor Removal (Ireland) Act, 1864 (*k*) "relating to the relief of the poor." Moreover, where a pauper is removable from England to Ireland under those Acts, boards of guardians may agree that, instead of being removed, he "shall be maintained by the guardians of the poor law union from which he is removable at the expense of the board of guardians of the union to which, if removed, he would be chargeable."

**Railways.**—The Railways Employment (Prevention of Accidents) Act (No. 27, U.K.), (*l*) which is founded on the report of a Royal Commission, selects twelve subject-matters of railway employment, of which lighting of stations during shunting after dark, working of trains without brake-vans, and protection of men relaying or repairing a permanent way appear to be the most important, and empowers the Board of Trade to make such rules as they think fit with respect to any such subjects, and also, after communicating with the railway company and giving them a reasonable opportunity of reducing or removing the danger or risk, with respect to any other operation of railway service which the Board consider to be avoidably dangerous. In the case of rules of either kind, notice must be given of the place where copies of their drafts may be obtained, and of the time, not being less than one-month, within which objections will be considered by the Board, with the right of a dissatisfied objector to refer the question in dispute to the Railway and Canal Commissioners, both the Board and the Commissioners being bound to have regard, amongst other matters, to the question whether the requirements of any rule objected to "would materially interfere with the trade of the country or with the necessary operation of the railway company." A specific order or direction may be made or given in the place of the general rules, and rules may be rescinded, on application by any person affected, after having been in operation for at least more than three months, any such application, if made within eighteen months, to be referable to the Railway Commissioners if the Board of Trade decline to entertain it. Contravention of a rule is punishable by a fine of £50, or £10 a day in the case of a continuing offence, the convicted offender having, however, the right of appeal to quarter sessions. Debentures or debenture stock ranking *pari passu* with existing issues and bearing interest at a rate not exceeding five per cent. per annum may, under the superintendence of the Board of Trade, be issued to meet any expenses attributable to rules under the Act which would be properly chargeable to capital account.

**Revenue.**—The Finance Act (No. 7, U.K.) (*m*) raised the 4*d.* duty on tea and the 8*d.* income tax to 6*d.* and 1*s.*, and considerably increased the duties on tobacco, beer, and spirits. The cigar duty, for instance,

(*k*) 27 & 28 Vict. c. 105.

(*l*) See *infra*, p. 80.

(*m*) See *infra*, p. 109.



was raised from 5s. to 5s. 6*d.*, the Cavendish duty from 3s. 10*d.* to 4s. 4*d.*, and the general manufactured tobacco duty from 3s. 5*d.* to 3s. 10*d.* per pound<sup>(n)</sup> and the increase of the duties on spirits and beer applies both to Customs and Excise duties. There was also a suspension of the sinking fund created in 1887, and a suspension of payments on capital of certain terminable annuities. All these amendments were temporary only, that as to the tea, tobacco, beer, and spirit duties running from March 6, 1900, last to August 1st next, and that as to income tax and the National Debt from April 6, 1900, to April 5, 1901, the Act, which received the Royal Assent on April 9th, being retrospective, as is usual with Finance Acts. Temporary also, was the power given to the Treasury, "on the recommendation of the Secretary of State or of the Admiralty, as the case requires," to remit all death duties up to a limited amount on property passing to the widow or descendants of any person dying "from wounds inflicted, accident occurring, or disease contracted" while on active military or naval service against an enemy after October 11, 1899. The official power of remission is limited to £150 in any one case, and to estates valued for estate duty at £5000 or less, the rate of duty on estates of a value between £1000 and £10,000 being three per cent. It may be observed that an old Stamp Act of 1815<sup>(o)</sup> exempts from all stamp duties the probate of the will of any common seaman, marine, or soldier who shall be slain or die in the service of the Sovereign, and that the Wills Act of 1837,<sup>(p)</sup> repeating a provision of the Statute of Frauds passed more than two hundred years ago, allows any soldier on active service to dispose of his personal estate as he might have done before the passing of that Act—that is, with very much less formality than that required from ordinary testators.

Other amendments are permanent, and one of them is of extreme importance. The Act of 1894,<sup>(q)</sup> had made gifts within twelve months of the donor's death dutiable. The new Act has declared dutiability in case of death within twelve months, but in such case only as follows, in s. 11:—

In the case of every person dying after March 31st, 1900, property, whether real or personal, in which the deceased person or any other person had an estate or interest limited to cease on the death of the deceased shall, for the purpose of the Finance Act, 1894, and the Acts amending that Act, be deemed to pass on the death of the deceased, notwithstanding that that estate or interest has been surrendered, assured, divested, or otherwise disposed of, whether for value or not, to or for the benefit of any

<sup>(n)</sup> See *infra*, p. 89.

<sup>(p)</sup> 7 Wm. IV. & 1 Vict. c. 26.

<sup>(o)</sup> 55 Geo. III. c. 184.

<sup>(q)</sup> 57 & 58 Vict. c. 30.

person entitled to an estate or interest in remainder or reversion in such property, unless that surrender, assurance, divesting, or disposition was *bonâ fide* made or effected twelve months before the death of the deceased, and *bonâ fide* possession and enjoyment of the property was assumed thereunder immediately upon the surrender, assurance, divesting, or disposition, and thenceforward retained to the entire exclusion of the person who had the estate or interest limited to cease as aforesaid, and of any benefit to him by contract or otherwise.

Other amendments of the Act of 1894 are these: Aggregation for the purpose of duty estates passing to indifferent persons or to the same person in different ways was one of its main features, but it excluded from aggregation two classes of property, the first being that in which the deceased never had an interest, and the second that which, under a disposition not made by the deceased, passes on death to any one except a wife, husband, ancestor, or descendant. All property in the second class, except an expectancy *bonâ fide* sold, will now be aggregated for duty purposes. It is also provided that fractions are no longer to be excluded (as they have been since 1896) in reckoning up rates and amounts of estate duty, and that the Inland Revenue Commissioners may (though they will not become bound to) accept unsworn statements in correction of affidavits by executors and others.

The War Loan Act (No. 2, U.K.), under which the number of applications of investors to become national creditors was 39,800 (of whom more than 30,000 applied for allotments between £100 and £1000) and the total amount applied for was £335,500,000, authorised borrowing by a special War Loan up to the amount of £35,000,000 for the service of the year ending on March 31, 1901, and the Supplemental War Loan Act (No. 61, U.K.) authorised borrowing for the same service up to the amount of £13,000,000 more.

**Shipping.**—The Merchant Shipping (Liability of Shipowners and others) Act (No. 32, U.K.) extends to all loss or damage caused to property of any kind by improper navigation “without their actual fault or privity,” the limitation of the liability of shipowners (to £8 per ton of the ship’s tonnage) set by s. 503 of the Merchant Shipping Act, 1894, (r) in respect of loss of or damage to ships, goods, or other things. The Act also provides that—

The owners of any dock or canal, or a harbour authority or a conservancy authority . . . shall not, where without their actual fault or privity any loss or damage is caused to any vessel or vessels, or to any goods, merchandise, or other things whatsoever on board any vessel or vessels, be liable to damages beyond an aggregate amount not exceeding £8 for each ton of the tonnage of the largest registered British ship which, at the time



of such loss or damage occurring, is, or within the period of five years previous thereto has been, within the area over which such dock or canal owner, harbour authority, or conservancy authority performs any duty or exercises any power.

**Veterinary Surgeons.**—The Veterinary Surgeons Amendment Act (No. 24, U.K.) extends the disciplinary powers of the Royal College of Veterinary Surgeons to all persons holding the veterinary certificate of the Highland and Agricultural Society of Scotland granted prior to the passing of the Veterinary Surgeons Act of 1881. (*s*)

**Working Men's Dwellings.**—The Housing of the Working Classes Act (No. 59, E.) is an adoptive Act only, being limited in its application to Part III. of the Consolidating Act of 1890, (*t*) which part is also adoptive only, and enables local authorities to establish lodging-houses for the working classes. It allows any council, except a rural district council, which may have already adopted that part of the Act, to establish or acquire lodging-houses for the working classes outside their district. There is no definition of the term "working classes" either in the Act of 1890 or in the new Act, but "lodging-houses" by the Act of 1890 include separate houses or cottages, whether containing one or several tenements, the term "cottage" including a garden of not more than half an acre and of not more than the annual value of £3. Part III. of the Act is also newly allowed to be adopted by the council of any rural district, with the consent of its county council. In giving or withholding consent the county council is to have regard to the area proposed, to the necessity for accommodation therein, to the probability of the required accommodation being provided elsewhere, and to the liability which will be incurred by the rates, as well as to the question whether adoption is generally prudent. There are special provisions as to expenses in London. Local authorities, if rural, with the consent of the county council, and if urban, with the consent of the Local Government Board, may let on lease land acquired by them to a lessee agreeing to build and maintain lodging-houses exclusively for occupation by the working classes.

Perhaps the most important of the new enactments is that which directs that county councils, upon a parish council resolving that a rural district council ought to have taken steps for adoption of the Act and have not done so, may themselves take over the powers of the district council as to that parish. Part III. of the Act of 1890, which is now brought into such prominent importance, was to a great extent a reproduction of the Labouring Classes' Lodging-Houses Acts of 1851 (*u*) and 1866, (*x*) which it repealed. The Act of 1851 was in

(*s*) 44 & 45 Vict. c. 62.

(*u*) 14 & 15 Vict. c. 34.

(*t*) 53 & 54 Vict. c. 70.

(*x*) 29 & 30 Vict. c. 66.

operation for nearly forty years, but was adopted, it is believed, in one single instance only; Part III. of the Act of 1890 has, it is believed, been adopted with some frequency.

**Temporary Laws.**—Amongst the many other temporary enactments continued by the Expiring Laws Continuance Act (No. 37, U.K.) are the Poor Rate Exemption Act, 1840, (*y*) by which personal property is exempt from rates; the Promissory Notes Act, 1863, (*z*) which “removes certain restrictions on the negotiation of promissory notes and bills of exchange under a limited sum”; the Militia (Ballot Suspension) Act, 1865 (*a*); the Sunday Observation Prosecution Act, 1871, (*b*) restricting prosecution under the Caroline Act, which, as published by authority in the second edition of the “Statutes Revised,” obliges a justice of the peace to sentence a convicted offender, in default of a five-shilling fine, to two hours of the stocks; the Employers’ Liability Act, 1880 (*c*); and last, though not least, the Local Government Elections Act, 1896, (*d*) by which a county council may smooth over difficulties arising out of any election of parish or district councillors or guardians.

**Scotland.**—The Executors (Scotland) Act, 1900 (No. 55, S.), contains nine sections. Executors nominate are (subject to express provisions otherwise) invested with all the powers and made subject to all the liabilities “which from time to time gratuitous trustees have, or are subject to under the Trusts (Scotland) Acts, 1861 (*e*) to 1898, (*f*) or this Act, or any Act amending the same, and otherwise under the Statute and Common Law of Scotland.” Where a testator has not appointed an executor, or if an executor cannot act, “testamentary trustees of such testator, original or assumed, or appointed by the Supreme Court (if any), failing whom any general donee or universal legatory or residuary legatee” are to be his executors nominate. Where confirmation is granted in favour of more executors dative than one, the powers conferred to it are to accrue to the survivors or survivor, and while more than two survive, the majority is to be a quorum, and all confirmations are to be accompanied by inventories. The Act also deals with the transmission of trust funds by the executors of the sole or last surviving trustee and the grant of confirmation *ad non executa*, designates officers before whom oaths may be taken, and facilitates the grant of confirmations under the Intestates’ Widows and Children (Scotland) Act, 1875, (*g*) and other enactments regulating confirmation in the case of estates of small value.

(*y*) 3 & 4 Vict. c. 89.

(*a*) 28 & 29 Vict. c. 46.

(*c*) 43 & 44 Vict. c. 42.

(*e*) 24 & 25 Vict. c. 84.

(*z*) 26 & 27 Vict. c. 105.

(*b*) 34 & 35 Vict. c. 87.

(*d*) 59 & 60 Vict. c. 1.

(*f*) 61 & 62 Vict. c. 42.

(*g*) 38 & 39 Vict. c. 41.



The Inebriates Amendment (Scotland) Act (No. 28, S.) enables county and town councils to impose rates and borrow money for the purpose of defraying expenditure under the Inebriates Act, 1898 (*h*). It also allows the committal to prison for seven days of "every person who in any road, street, or public place, or in any building to which the public have access, commits the offence of behaving while drunk in a riotous or disorderly manner," and enacts that such an offence "shall be deemed to be an offence mentioned in the first schedule to the Inebriates Act, 1888" (*i*)—with the result that the offender, if a habitual drunkard convicted at least three times within the twelve previous months of certain similar offences connected with drunkenness, will be liable "on conviction" to be detained for not more than three years in a certified inebriate reformatory."

The Town Councils (Scotland) Act, (No. 49, S.), (*k*) "to consolidate and amend the law relating to the election and proceedings of town councils in Scotland," contains one hundred and seventeen sections and five schedules, and is by far the longest Statute of the Session. Thirteen Acts wholly and four Acts partly, from an Act of 1823 (*l*) "for regulating the mode of accounting for the common good and revenues of the royal burghs of Scotland" to the Local Government (Scotland) Act, 1894, (*m*) inclusive, are repealed. In this place it may be sufficient to notice that one-third of a town council is a quorum; that only men may be councillors; and that the electors are all Parliamentary voters, all persons are entitled to be such, but for change of residence, or residence more than seven miles off, and "all peers and women who, in respect of the ownership or occupancy of premises within the municipal boundary, possess the qualifications entitling male commoners to vote in the election of a member of Parliament; provided that a wife shall not be registered or entitled to vote in respect of any premises in respect of which her husband is registered."

**Ireland.**—The Census (Ireland) Act (No. 6, I.) in the main follows the English Act, but differs from it (1) in requiring the religious profession of each person enumerated to be described in the census papers; (2) in not requiring the condition as to marriage to be stated; and (3) in authorising other particulars than those mentioned in the Statute itself to be inquired into. For these particulars reference must be had to the appendix to the 1892 report of the Commissioners appointed under the Census (Ireland) Act, 1890. (*n*)

The Intermediate Education (Ireland) Act (No. 43, I.) enables the

(*h*) 61 & 62 Vict. c. 60. See *supra*, p. 19.

(*k*) See *infra*, pp. 113, 160.

(*m*) 57 & 58 Vict. c. 58.

(*i*) 51 & 52 Vict. c. 19.

(*l*) 3 Geo. IV. c. 91.

(*n*) 53 & 54 Vict. c. 46.

Intermediate Education Board for Ireland to apply the funds placed at the disposal of that Board in the manner provided by rules to be made by the Board with the approval of the Lord-Lieutenant, "for the purpose of carrying out the recommendations contained in the general summary of the report of the Commissioners appointed by the Lord-Lieutenant to report upon the system of intermediate education in Ireland," dated August 11, 1899, and presented to both Houses of Parliament. The Act also empowers the Board to appoint inspectors and grant superannuation allowances, and increases the strength of the Board from seven persons to twelve.

The Beer Retailers' and Spirit Grocers' Retail Licences (Ireland) Act (No. 30, I.) enables licensing justices in their free and unqualified discretion either to refuse a certificate for any new excise or other licence for retail of beer or spirits to be consumed off the premises on any ground appearing to them to be sufficient, or to grant the same to such persons as they in the exercise of their statutory powers and in the exercise of their discretion deem fit and proper; adding, that the justices may "hear and receive and act upon any objection and any evidence either in support thereof or in aid of the application made and tendered by any resident or owner of property" wherein the premises proposed to be licensed are situate.

There are four Irish Local Government Acts—the Public Health (Ireland) Act (No. 10, I.), the County Surveyors (Ireland) Act (No. 18, I.), the Local Government (No. 2) (*sic*) Ireland Act (No. 41, I.), and the Local Government (Ireland) Act (No. 63, I.). The Public Health Act allows the Local Government Board, with the consent of the rural district council, to alter any area of charge theretofore determined by order of that Board as the area on which they should be chargeable any special expenses leviable off a contributory place in their district. The County Surveyors Act allows any person to be appointed county surveyor whose qualifications have been certified by the Civil Service Commissioners. The Local Government (No. 2) Act allows the Local Government Board by Provisional Order confirmed by Parliament to annul or vary "either generally or on the application of the council of any particular county as respects that county, any provision in the Local Government (Procedure of Councils) Order, 1889"; and the Local Government (Ireland) Act (No. 63, I.) amends seven sections of the Local Government (Ireland) Act, 1898, (*o*) and three articles of the schedule to the Local Government (Applications of Enactments) Order, 1898, the Act of 1900 being directed to come into operation on April 1, 1901, "or on such other day not more than twelve months earlier or later as the Local Government Board may appoint either



generally or with reference to any particular provision of the Act"—an elastic direction very similar to that of the English Local Government Act, 1888, (*p*) s. 109, and the London Government Act, 1899, (*q*) s. 133.

The Poor Relief (Ireland) Act (No. 45, I.) abolishes, in the case of relief to a child or a lunatic, a prohibition of a Poor Relief Act of 1847 (*r*) from giving relief from the rates of a union to a person not within the union, and also allows, under the authority of a Local Government Board certificate, any quantity of land which may be acquired under the Poor Relief Acts, 1838 (*s*) to 1892, (*t*) to be exceeded.

**1901** (*u*)      Acts passed—Public-General, 40; Local, 281.

Out of some three hundred bills submitted in the Session of 1901 to Parliament, only forty received the Royal assent—a much smaller number than during any year within living memory. The average output of public Acts for the last ten years was 62; that of 1837 was 91; of 1847, 115; of 1857, 85; of 1867, 146; of 1877, 69; of 1887, 73; and of 1897, 67—an average of 92 in ten representative years of the late reign. Of four bills of great constitutional importance, however, the Civil List Bill, the Demise of the Crown Bill, the Royal Titles Bill, and the Royal Declaration Bill, the three first named became law. The Youthful Offenders Act, the Education Act, the Education (Scotland) Act, the Larceny Act, the Sale of Liquors to Children Act, and the Public Libraries Act have each made a mark in its own sphere; and consolidation, which had been a stranger to the Statute Book since the Friendly Societies Act of 1896, (*x*) reappeared at last in a Factory and Workshop Act. The three Acts relating to the Crown will be dealt with first, and the remaining Acts noticed afterwards will be under alphabetical titles.

**The Crown.**—The Civil List Act (No. 4, B.E.) opens with the recital—which originated with the Act of George III.—that his Majesty the King had been graciously pleased to signify to his faithful Commons that his Majesty placed unreservedly at their disposal those hereditary revenues which were so placed by his predecessor," and was "desirous of making competent provision for the honourable support and maintenance" of his son, his daughter-in-law, and his daughters (naming

(*p*) 51 & 52 Vict. c. 41.

(*r*) 10 & 11 Vict. c. 90.

(*t*) 55 & 56 Vict. c. 5.

(*q*) 62 & 63 Vict. c. 14.

(*s*) 1 & 2 Vict. c. 56.

(*u*) This article is mainly a reproduction of three articles by the late Mr. J. M. Lely in the *Times* of October 15, October 20, and November 19, 1901, and of the summary prefixed to the continuation for 1901 of Chitty's "Statutes of Practical Utility."

(*x*) 59 & 60 Vict. c. 25.

these five Royal personages), and that similar provision should be made for her Majesty the Queen and the Duchess of Cornwall and York in event of their surviving the King and Duke respectively. The declaration follows that "Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom, in Parliament assembled," have freely and voluntarily resolved to make provision for the purposes aforesaid, and then comes the enactment that—

The hereditary revenues which were by s. 2 of the Civil List Act, 1837, directed to be carried to and made part of the Consolidated Fund shall, during the present reign and a period of six months afterwards, be paid into the Exchequer, and be made part of the Consolidated Fund.

There shall, during the present reign and a period of six months afterwards, be paid for the King's Civil List, the yearly sum of £470,000.

The Act of 1837 (*y*), which provided for a yet unmarried Queen, had granted her late Majesty the yearly sum of £385,000, and its second section thus incorporated directed that—

The produce of all the hereditary rates, duties, payments, and revenues in England, Scotland, and Ireland respectively, and also the small branches of the hereditary revenue, and the produce of the hereditary casual revenues arising from any droits of Admiralty or droits of the Crown, . . . and from the surplus revenues of Gibraltar, or any other possession of her Majesty out of the United Kingdom, and from all other casual revenues arising either in the foreign possessions of her Majesty, or in the United Kingdom, which were surrendered by his late Majesty King William the Fourth for his life, and which upon the demise of his said late Majesty became payable to her present Majesty . . . which shall accrue during the life of her present Majesty . . . save and except the hereditary duties of excise on beer, ale, and cider in Great Britain, shall be carried to and made part of the Consolidated Fund of the United Kingdom of Great Britain and Ireland; and after the decease of her present Majesty (whom God along preserve) all the said hereditary revenues shall be payable and paid to her Majesty's heirs and successors.

This sweeping clause seems to comprehend every possible source of a Sovereign's revenue except the Duchy of Lancaster lands and the hereditary beer duties, including therefore Crown lands, treasure trove, escheats of the property of subjects dying without known legitimate representatives, ownerless property such as that of a defunct corporation, gold and silver mines within the meaning of an Act of William III., and wrecks to which the owner cannot establish his claim within a year—a species of property frequently dealt with by legislation, and now by the Merchant Shipping Act, 1894 (*z*)—though not perhaps the whales and sturgeons, the taking of which, says Blackstone, "is the exclusive right of the Prince."

(*y*) 1 & 2 Vict. c. 2.

(*z*) 57 & 58 Vict. c. 60.



**The Demise of the Crown Act** (No. 5, B.E.) briefly provides that—

The holding of any office under the Crown, whether within or without his Majesty's dominions, shall not be affected, nor shall any fresh appointment thereto be rendered necessary, by the demise of the Crown. This Act shall take effect as from the last demise of the Crown.

A word should be said as to the statutory position of the judges. As is well known, the Act of Settlement of William III. (*a*) first made their office tenable during good behaviour instead of during the pleasure of the Crown; and that provision is repeated in the Judicature Act of 1875 (*b*) (that of 1873 (*c*) having a little oddly made the office tenable for life) in relation to the Supreme Court. One of the first Acts of George III., effectuating a declaration by his Majesty from the Throne to both Houses of Parliament "that he looked upon the independence and uprightness of judges as one of the best securities to the rights and liberties of his loving subjects, and as most conducive to the honour of his Crown," and effectuating also, "in return for his paternal goodness, the wise, just, and generous purpose of his Royal heart," enacted that judges should, as hitherto, continue in office during good behaviour, and, further, should so continue notwithstanding the demise of the Crown. The Civil Procedure Acts Repeal Act of 1879 (*d*) had repealed this Georgian Act with a host of other old-fashioned enactments; and, notwithstanding the very comprehensive saving by that Act of any jurisdiction or principle or rule of law or equity established or confirmed by it, the technical point might possibly have arisen that judges were still within the Succession to the Crown Act of 1707 (*e*)—with the effect that their offices would have determined at the end of six months from January 22, 1901.

**The Royal Titles Act** (No. 15, B.E.) enacted that—

It shall be lawful for his most gracious Majesty, with a view to the recognition of his Majesty's dominions beyond the seas, by his Royal Proclamation under the Great Seal of the United Kingdom issued within six months after the passing of this Act, to make such addition to the style and titles at present appertaining to the Imperial Crown of the United Kingdom and its dependencies as to his Majesty may seem fit.

Much controversy arose in Parliament on the question whether the Act itself should contain the words of the new addition, or whether the framing of them should be left to his Majesty the King. The two precedents followed were themselves a departure from the precedent set by Henry VIII., the influence of which is traceable in the Proclamation

(*a*) 12 & 13 Wm. III. c. 2.

(*b*) 38 & 39 Vict. c. 77.

(*c*) 36 & 37 Vict. c. 66.

(*d*) 42 & 43 Vict. c. 59.

(*e*) 6 Anne, c. 41.

of 1876 under the Royal Titles Act of that year recognising the transfer of the Government of India from the East India Company to the Crown. Henry's title was altogether statutory, being derived from an Act of 1543.

**Army.**—The Army (Annual) Act (No. 2, B.E.), after the preamble (taken from the annual Mutiny Acts superseded in 1881 (*f*) by the Army Act) to the effect that “the raising of a standing army within the United Kingdom in time of peace, unless it be with the consent of Parliament, is against law,” and also that a body of forces ought to be continued, consisting of 450,000 men, exclusive of those serving in India, continued the Army Act for one year more. The important amendment is inserted that the rules as to the procedure of Courts of inquiry, which may be made from time by his Majesty the King, may provide for evidence being taken on oath and empower Courts of inquiry to administer oaths for that purpose generally, as already could be done, specially in inquiries as to absence without leave under the s. 72 of the Army Act and the 125th of the Rules of Procedure, 1899—thus forming an exception to the 124th Rule, which lays down that “a Court of inquiry has no judicial power, and is in strictness not a Court at all.” It is also provided that throughout the Army Act references to her Majesty the Queen shall be construed as references to his Majesty the King, and that the necessary words shall be substituted accordingly. The first part of this provision is technically surplusage, looking to the general enactment of s. 30 of the Interpretation Act, 1889, (*g*) that in every Act of Parliament references to the Sovereign reigning at the time of the passing of the Act shall, unless the contrary intention appears, be construed as references to the Sovereign for the time being; the second is a direction to the King's printers, who appear by virtue of s. 8 of the Army (Annual) Act, 1885, (*h*) to be bound to keep the Army Act always printed up to date.

**Colonies.**—The Colonial Acts Confirmation Act (No. 29) merely confirms two New South Wales Acts, (*i*) a Queensland Act, (*k*) and two Western Australia Acts, (*l*) all passed in 1900 and all connected with the Commonwealth of Australia Constitution Act of that year, on the ground that their validity is open to doubt by reason of their not having been reserved for the signification of her late Majesty's pleasure.

**Criminal Law.**—The Larceny Act (No. 10, E.I.), which came into operation on January 1, 1902, greatly amends the law of misappropriation, enacting, in substitution for the ss. 75 and 76 of the Larceny Act, 1861, (*m*) which it repeals, that—

(*f*) 44 & 45 Vict. c. 58.

(*h*) 48 & 49 Vict. c. 8.

(*k*) No. 25, *infra*, p. 508.

(*g*) 52 & 53 Vict. c. 63.

(*i*) Nos. 73 and 84, *infra*, p. 462.

(*l*) Nos. 2 and 5, *infra*, vol. ii. p. 178.

(*m*) 24 & 25 Vict. c. 96.



Whosoever (a) being entrusted, either solely or jointly with any other person, with any property, in order that he may retain in safe custody or apply, pay, or deliver, for any purpose or to any person, the property or any part thereof, or any proceeds thereof; or (b) having, either solely or jointly with any other person, received any property for or on account of any other person, fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property, or any part thereof or any proceeds thereof, shall be guilty of a misdemeanour, and be liable on conviction to penal servitude for a term not exceeding seven years, or to imprisonment, with or without hard labour, for a term not exceeding two years.

Nothing in this section shall apply to or affect any trustee on any express trust created by a deed or will, or any mortgagee of any property, real or personal, in respect of any act done by the trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage.

The saving for trustees and mortgagees is taken from the repealed s. 75 of the Act of 1861, (*n*) which section, however, exempted trustees under any instrument whatever, whereas the new section exempts trustees only under deed or will.

The two main amendments effected are that there is no longer (1) any special mention of particular agents as possible offenders, and (2) any necessity for a direction in writing by the principal to have been given for the offence of misappropriation to be committed; but the whole phraseology is much changed, and there is perhaps an addition in point of substance.

The new Act does not so much create a new offence as allow it to be proved by different evidence—*i.e.* without written evidence. The new enactment being expressly “substituted” for ss. 75 and 76 of the Act of 1861 (*o*) will be subject to s. 85 of that Act, which directs (1) that nothing in its “last ten preceding sections” shall entitle any person to refuse to make full discovery in equity or to answer any question or interrogatory in any civil proceeding in any Court or in bankruptcy proceedings; and (2) that no person shall be convicted in respect of any act disclosed by him “in consequence of any compulsory process.” The exclusion of trusts from the new Act must be viewed in the light of s. 80 of the Act of 1861, by which a trustee fraudulently disposing of trust property is guilty of a misdemeanour, for the prosecution of which, however, the sanction of the Attorney-General is required, or, in case an action be pending against the alleged offender, of the judge in whose Court the action shall have been brought or is pending.

The Youthful Offenders Act (No. 20, U.K.) (*p*) carries one step

(*n*) 24 & 25 Vict. c. 96.

(*o*) 24 & 25 Vict. c. 96.

(*p*) See *infra*, p. 145.

further the treatment of juvenile offenders which began in 1855, and was materially advanced in 1866 by Industrial and Reformatory School Acts, in 1879 (*q*) and 1899 (*r*) by Summary Jurisdiction Acts, and in 1887 by the Probation of First Offenders Act, (*s*) and introduces the new element of fixing a parent with liability for the misdeeds of his child. "Children" or "young persons" (a "child" is below twelve and a "young person" below sixteen), if convicted of felony and discharged by reason of the triviality of the offence, or of youth, or only sentenced to be whipped, are not to be sent to industrial schools. If they are charged with any offence for which a fine, damages, or costs may be imposed by justices of the peace, and there is reason to believe that their parents or guardians have conduced, by wilful default or habitual neglect, to the commission of the alleged offence, the parents or guardians may be summoned and tried with them, and may be ordered to pay the fine, damages, and costs, or "to give security for the good behaviour of the child or young person." There is to be an appeal from the order to quarter sessions, and the same young offender can only be once answered for by the parent or guardian. It is further provided that on remand or commitment of any youthful offender, the Court may, instead of committing to prison, remand or commit him "into the custody of any fit person . . . willing to receive him (due regard being had, where practicable, to the religious persuasion of the child), to be detained in that custody for the period for which he has been remanded, or until he is thence delivered by due course of law." The words "any fit person" are wide and vague, but it may be observed that by virtue of s. 19 of the Interpretation Act, 1889, (*t*) the word "person" includes a corporation. Courts of assize and quarter sessions, which hitherto could send juvenile offenders to a reformatory only, are newly clothed with the power to send them to an industrial school, and elaborate provisions are made as to the maintenance of the young offenders. Scotland and Ireland are brought within the purview of the Act by very numerous substitutions for enactments where necessary of Scots and Irish enactments.

**Education.**—The Education Act (No. 11, E.) (*u*) enacted that—

Where a School Board has at any time during the twelve months immediately preceding the 31st day of July, 1901, maintained out of the school fund any school or class to the maintenance of which the school fund is not lawfully applicable, the council of the county or county borough within which the school or class is held . . . may empower the School Board to carry on for the period of one year from that day the work of the school or class to such extent and on such terms as may be agreed on

(*q*) 42 & 43 Vict. c. 48.

(*r*) See *supra*, p. 27.

(*s*) 50 & 51 Vict. c. 25.

(*t*) 52 & 53 Vict. c. 63.

(*u*) See *infra*, p. 93.



between such council . . . and the School Board, and to apply to the maintenance of the school or class such sum out of the school fund as the council . . . may sanction.

Similar power, but subject to the sanction of the Board of Education, was conferred on any other local authority under the Technical Instruction Acts, and it was added that the legality of any expenses incurred before July 31, 1901, and sanctioned by the Local Government Board, was not to be questioned in any Court. This purely temporary Act, (x) which it is to be observed omitted the well-known adjective "elementary" before its short title, was occasioned by the judgment of the Court of Appeal in *Reg. v. Cockerton*, (y) affirming that of Mr. Justice Wills and Mr. Justice Kennedy, that it is not within the power of a school board to expend money raised by local rate upon any education other than elementary.

**Factories and Workshops.**—The Factory and Workshop Act (No 22, U.K.) (z) is an Act of 10 parts, 163 sections, and 7 schedules, consolidating with amendments the Factory and Workshop Act of 1878, (a) and its amending Acts of 1883, (b) 1889, (c) 1891, (d) and 1897, (e) and dealing slightly with the Railway Employment (Prevention of Accidents) Act, 1900. (f) The Act of 1878 (g) had itself consolidated sixteen statutes, beginning with the Peel Act of the father of the great Sir Robert, which was passed in 1802, (h) to preserve the health and morals of apprentices and others employed in "cotton and other mills and factories," by which it was enacted that the rooms were to be washed with quicklime and water twice a year, the hours of work were limited to twelve, night work was prohibited, the apprentices were instructed in reading, writing, and arithmetic every working day for the first four years, and in the principles of the Christian religion on Sundays, and the factories and mills were visited by a justice of the peace and a clergyman. In 1833 were commenced the reforms so much and so justly associated with the name of Lord Shaftesbury. Lord Shaftesbury's Act limited the working hours of children under thirteen to eight hours a day, and of boys and girls under eighteen to twelve hours a day. In 1844 (i) the employment of children under eight was prohibited, and that of women restricted, and Lord Shaftesbury's Printworks Act (k) followed in 1845. The "Ten Hours Bill," (l) restricting the working time

(x) See *infra*, p. 93.

(z) See *infra*, p. 111.

(b) 46 & 47 Vict. c. 53.

(d) 54 & 55 Vict. c. 75.

(f) See *supra*, p. 67.

(h) 42 Geo. III. c. 73.

(k) 8 & 9 Vict. c. 29.

(y) [1901] 1 K. B. 726.

(a) 41 & 42 Vict. c. 16.

(c) 52 & 53 Vict. c. 62.

(e) 60 & 61 Vict. c. 58.

(g) 41 & 42 Vict. c. 16.

(i) 7 & 8 Vict. c. 15.

(l) 10 & 11 Vict. c. 29.

for women and young persons to ten hours a day, and the working day to the period between 5.30 a.m. and 8 p.m., was passed in 1847, and an Act (*m*) of 1853 limited the time for children to the period between 6 a.m. and 6 p.m. In 1864 (*n*) earthenware and other manufactories, in 1867 (*o*) (when factories and workshops were first dealt with separately) paper mills, glass works, and printing offices, in 1870 (*p*) bleaching and dye works were brought within factory law, and in 1878 (*q*) was passed the first consolidating Act (after an exhaustive inquiry by a Royal Commission), which was followed by the amending Acts of 1883 (*r*) (dealing mainly with white-lead factories and bakehouses); of 1889 (*s*) (applying solely to cotton cloth and like factories); of 1891 (*t*) (authorising special rules for dangerous trades, forbidding the employment of children under eleven, enjoining notice of accidents, and otherwise very miscellaneous amending the law); of 1895 (*u*) (bringing laundries and docks within the law, and further miscellaneous amending it; and of 1897 (*x*) (applying solely and shortly to cotton cloth and like factories). (*y*)

Considerable discussion took place as to the application of the Act to laundries, with the result that s. 22 of the Act of 1895 (*z*) (which Act was the first to apply to laundries) has substantially reappeared as s. 103 (4) of the new Act, with a substantial reproduction of one of its sub-sections as follows:—

Nothing in this section shall apply to any laundry in which the only persons employed are (a) inmates of any prison, reformatory, or industrial school, or other institution for the time being subject to inspection under any Act other than this Act; or (b) inmates of an institution conducted in good faith for religious or charitable purposes; (*a*) or (c) members of the same family dwelling there, or in which not more than two persons dwelling elsewhere are employed.

S. 103 of the Act applies, amongst others, its provisions as to “powers of inspectors,” to laundries “carried on by way of trade, or for purposes of gain,” and these provisions were objected to in respect of conventual laundries in Ireland, though the Act makes no express mention either of convents or of the sister country in connection with charitable institutions.

The most important novelties in the new Act are these:—Steam boilers must be examined and reported on at least once in every fourteen

(*m*) 16 & 17 Vict. c. 104.

(*o*) 30 & 31 Vict. c. 103.

(*q*) 41 & 42 Vict. c. 16.

(*s*) 52 & 53 Vict. c. 62.

(*u*) 58 & 59 Vict. c. 37.

(*n*) 27 & 28 Vict. c. 48.

(*p*) 33 & 34 Vict. c. 62.

(*r*) 46 & 47 Vict. c. 53.

(*t*) 54 & 55 Vict. c. 75.

(*x*) 60 & 61 Vict. c. 58.

(*y*) For further information on this subject see “The History of Factory Legislation,” by Miss Hutchins and Miss Harrison. London, 1907.

(*z*) 58 & 59 Vict. c. 37.

(*a*) See *infra*, p. 150.



months (s. 11); district councils may make bylaws for providing escape from fire (s. 15); if work for women and young persons in a textile factory begins on Saturdays at 6 a.m., it must end an hour sooner than under the old law—*e.g.* “if not less than one hour is allowed for meals, it must end at noon (instead of at 1 p.m.) in any manufacturing process, and at 12.30 (instead of 1.30) as regards employment for any purpose whatever” (s. 24); no child under twelve (substituted for eleven) may be employed, either in factory or workshop, unless lawfully employed before the Act (s. 62); the powers of making Home Office regulations for dangerous trades are very greatly increased (ss. 79–86); and county borough councils obtain many of the powers which district councils have (s. 154).

It is now proposed to present a short abstract of the principal enactments of the Act.

*I.—Health and Safety.*—A factory must be kept clean, free from effluvia from any drain or nuisance, not overcrowded, and ventilated against harm from factory impurities. The inside walls, if not painted once in seven years, must be limewashed once in every fourteen months, and, if so painted, must be “washed with hot water and soap once at least within every fourteen months, to date from the time when they were last washed.”

A workshop must similarly be kept clean, etc., but the specific directions as to limewashing do not apply to it.

The Home Office may authorise an inspector to enforce these and other provisions in default of their enforcement by district councils.

Machinery in a factory must be fenced, and steam boilers, both in factories and in workshops, must have proper safety valves and steam gauges, and be examined and reported on once in every fourteen months. A child must not be employed to clean any part of factory machinery in motion: nor a young person to clean any dangerous part or mill-gearing; nor a woman to clean mill-gearing while the machinery is in motion for the purpose of propelling any part of the manufacturing machinery. Post-1891 factories and post-1895 workshops in which more than forty persons are employed, must be furnished with district council certificates that they are provided with such means of escape from fire as can be reasonably required. In the case of pre-1892 factories and pre-1896 workshops in which more than forty persons are employed, district councils are bound to ascertain their condition, and, if they are not sufficiently provided with means of escape from fire, to serve notices on the owners specifying the necessary measures, and requiring them to be carried out before a specified date. Disputes between the owners and the councils as to what is necessary are to be settled by arbitration on application by either party. The doors

of a factory or workshop are to open from inside, and in the case of post-1896 buildings, the door of each room in which more than ten persons are employed must, unless they be sliding doors, open outwards.

Justices of the peace may on complaint of an inspector order dangerous machines to be made safe, and unhealthy factories or workshops to be made healthy.

Notices of accidents causing death or bodily injury are to be given to the district inspectors, and accidents are to be investigated by certifying surgeons, or, if the Home Office deem it expedient, by a competent person in open Court, not only with all the powers of a Court of Summary Jurisdiction, but with full powers of entering and inspecting buildings.

*II.—Employment.*—The provisions as to employment apply only to women, young persons, and children. Both in factories and in workshops Sunday employment is forbidden. No child under twelve may be employed either in a factory or workshop unless lawfully so employed at the commencement of the Act, before which under eleven was the protected age, the “eleven” having been raised in 1891 from the “ten” of 1878. Christmas Day, Good Friday, and every Bank Holiday are whole holidays in England “unless in lieu of any of those days another whole holiday, or two half-holidays, fixed by the occupier, be allowed.” Scotland and Ireland have each somewhat different days. Meals are to be simultaneous.

*III.—Education.*—The parent of any child employed in either factory or workshop must cause the child to attend some recognised efficient school which the parent may select on each work day for at least one attendance, or, if the employment be on the alternate-day system, on each work day preceding each day of employment for at least two attendances, with savings, however, for Saturdays, for sickness or like cause of absence, and for too great distance of some recognised efficient school. Certificates of attendance must be procured weekly from teachers by occupiers, and to employ an uncertificated child is illegal. When a child of thirteen has obtained a certificate of having attained such standard either (1) of proficiency in reading, writing, and arithmetic, or (2) of previous due attendance at a certified efficient school as may be jointly fixed by the Home Office and the Board of Education, that child becomes a “young person.”

*IV.—Dangerous and Unhealthy Industries.*—Notice of lead, phosphorus, arsenical or mercurial poisoning, or anthrax, if believed to be contracted in a factory or workshop, is to be sent by the medical attendant to the Chief Inspector of Factories. Special ventilation by fan or otherwise may be directed by an inspector where grinding, glazing, polishing by wheel or other process generating impurity is carried on, and women, young persons, or children must be sufficiently protected



from wet or steam where wet spinning is carried on. Other particular businesses are particularly dealt with, and the general sweeping and much-extended enactment follows that Home Office regulations may be made to meet the necessity of any case in which that Office certifies that any manufacture, etc., is dangerous or injurious to health, or dangerous to life or limb, either generally or in the case of women, children, or any other class of persons. There is an elaborate procedure for allowing all persons affected by the regulations to object to them before they are made.

*V.—Home Work.*—Lists of outworkers in such classes of work as may from time to time be prescribed by the Home Office must be kept by the occupiers of factories and workshops, and copies of them sent each February and August to the district councils, who are to have them examined, the lists themselves being open to inspection by inspectors and district council officers. Occupiers of factories or workshops are not to allow clothes to be made or cleaned in any dwelling-house where there is scarlet fever or small-pox, and district councils may prohibit home work in any house where there is an infectious disease—“*i.e.* small-pox, cholera, diphtheria, membranous croup, erysipelas croup, scarlatina, scarlet, typhus, typhoid, enteric, relapsing, continued, or puerperal,” or any other determined by the local authority to be infectious for the purpose of notification.

In “domestic” factories and workshops there are special hours of employment for women, young persons, and children, and the provisions of the Act as to prohibition of employment in meal time, affixing notices, holidays, notices of accidents, ventilation, and other matters do not apply, unless the manufacture carried on herein is officially certified to be dangerous.

*VI.—Particulars of Work and Wages.*—Particulars of work and wages are to be given to piece workers in textile factories when the work is given out to them. These are to be particulars of the rate of wages applicable to the work to be done, and also particulars of the work to which that rate is to be applied. Trade secrets must not be divulged by the workers under pain of a £10 fine. These provisions may be extended by the Home Office order to non-textile factories and workshops.

*VII.—Administration.*—Inspectors are appointed by the Home Office, with the approval of the Treasury as to number and salaries. In Wales and Monmouthshire Welsh speakers are, *cæteris paribus*, to be preferred. The inspectors have full powers of entry and examination of buildings at all reasonable times by day and night, and to question, either alone or in the presence of any other person, any person found therein. Occupiers are bound to assist, and wilful non-assistance

amounts to penal obstruction. Inspectors may conduct proceedings before magistrates. Certifying surgeons, with fees regulated by the Statute, if not agreed upon with occupiers, are also appointed by the Home Office. As to workshops, district councils have all the powers which inspectors have. Notice of occupation of any factory or workshop is to be given to the district inspector by the occupier within a month after occupation commenced, and the inspector is to forward such notice forthwith to the district council. An abstract of the Act, a notice of the inspector's name and address, and of the clock (if any) by which the hours of employment are regulated must be put up in every factory and workshop, and occupiers must keep general registers of particulars of children and young persons employed, of limewashing, accidents, and other matters as prescribed by the Home Office, and there must be sent to the chief inspector of factories, at intervals of not less than one nor more than three years, a "correct return," specifying the number of persons employed, with such particulars as to age, sex, and occupation as the Secretary of State may direct.

*VIII.—Legal Proceedings.*—If a factory or workshop is not kept in conformity with the Act, the occupier may be fined £10 or less by a Court of Summary Jurisdiction. A fine up to £100 may be inflicted if death or injury results from non-observance, and applied for the benefit of the injured worker or his family. Where a young person or child is employed contrary to the Act, the parent may be fined up to twenty shillings for each offence, unless it appears to the Court that it was committed without his consent.

**Intoxicating Liquors.**—The Intoxicating Liquors (Sale to Children) Act (No. 27, U.K.) penalises the sale of any description of intoxicating liquor by a licensed person to a child under fourteen (altered from the sixteen of the Bill), with savings for (1) sale in a closed vessel for consumption off the premises, (2) for sale at the residence of the buyer, and (3) for the employment by the seller of one of his family or servants as a delivering messenger. The second section enacts that—

Every holder of a licence who knowingly sells or delivers or allows any person to sell or deliver, save at the residence or working place of the purchaser, any description of intoxicating liquor to any person under the age of fourteen years for consumption by any person on or off the premises, excepting such intoxicating liquors as are sold or delivered in corked and sealed vessels [*i.e.* closed with a stopper of any material and secured with any substance without the destruction of which the stopper cannot be withdrawn] in quantities not less than one reputed pint for consumption off the premises only, shall be liable to a penalty not exceeding forty shillings for the first offence and not exceeding five pounds for any subsequent offence; and every person who knowingly sends any person under the age of fourteen years to any place where intoxicating liquors are sold



or delivered or distributed, for the purpose of obtaining any description of intoxicating liquor, excepting as aforesaid, for consumption by any person on or off the premises, shall be liable to like penalties.

The Act is directed to be read as one with the Licensing Acts, 1872 (*b*) to 1874, (*c*) and also with various Scots and Irish Licensing Acts. The three countries have always been dealt with separately in the matter of sale by retail of intoxicating liquors, with the peculiar exception that the Act of 1872 (*d*) applies to Ireland as well as England, though the Act of 1874 (*e*) does not.

**Libraries.**—The Public Libraries Act (No. 19, E.I.) “to amend the Acts relating to Public Libraries, Museums, and Gymnasiums, and to regulate the liability of managers of libraries to proceedings for libel,” has a title curiously promising a little more than it performs. On looking through the Act it is impossible to find any such regulation of liability. The fact is that the bill as it left the House of Lords had contained two clauses to the following effect:—

A person shall not be entitled to institute any legal proceedings against a library authority or any member, officer, or servant thereof, or against the managers of any library established otherwise than under the principal Act, in respect of libellous matter in any book kept for use in or circulation from their library, unless he has first instituted legal proceedings against the author, publisher, or printer, and that (*sic*) one of such persons has been convicted or adjudged to pay damages on account of libellous matter contained in the said book.

Nothing in this Act shall affect the Trustees of the British Museum so as to make them liable to any legal proceedings in respect of books in their custody pursuant to Statute.

These clauses were suggested by a curious action against the British Museum Trustees, and the principal librarian, (*f*) for an alleged libel by placing a clearly libellous publication in the Museum library. The qualifications of library authorities are extended, and disqualifications by infancy, bankruptcy, interest, etc., under the Local Government Act, 1894, are applied to them. There is nothing said about women, but it is conceived that they have always been eligible; and it may be mentioned that the London Government Act of 1899, (*g*) though it excludes women from the London borough councils, enacts by s. 8 that any London borough library committee may consist partly of “persons not members of the council,” thus grammatically, at any rate, including women. Extensive powers of making bylaws are also given.

(*b*) 35 & 36 Vict. c. 94.

(*c*) 37 & 38 Vict. c. 49.

(*d*) 35 & 36 Vict. c. 94.

(*e*) 37 & 38 Vict. c. 49.

(*f*) *Martin and Wife v. Trustees of British Museum* (1893), 10 T. L. R. pp. 215, 338.

(*g*) See *supra*, p. 32.

The bylaws can only be made in accordance with a set of provisions incorporated by reference (as in the Factory Act in respect of bylaws by a district council for providing means of escape from a burning factory) from the Public Health Act, 1875, (*h*) by the effect of which bylaws repugnant to the laws of England are void, penalties exceeding £5 may not be imposed, confirmation by the Local Government Board is required, but not allowed unless full notice has been given to apply for it, and a copy of all bylaws in force must be hung up in the library and given to any ratepayer on application. Library authorities gain the power of agreeing to share the cost of maintenance of each other's libraries, "and as to the interchange, hire and use of books and newspapers belonging to such authorities respectively."

A clause inserted by Lord Newton, who stated that in many parts of the country, especially in Lancashire, libraries are apt to be seriously damaged by subsidence, provides that the expenses of repairing any damage to a library building through the subsidence of the ground are not to be reckoned for the purpose of any limitation of the rate under s. 2 of the Act of 1892 (*i*). That enactment, it will be remembered, limits the rate to a penny in the pound, adding, moreover, that the Act may be adopted subject to a condition that the rate may not exceed one half-penny or three farthings, but that "such limitation, if fixed at one half-penny, may be subsequently raised to three farthings, or altogether removed, or where it is for the time being fixed at three farthings may be removed."

The number of these free public  $\psi\upsilon\chi\eta\varsigma\ \lambda\alpha\rho\epsilon\iota\alpha$  in England was 209 ten years ago, and is believed to be increasing. For the purposes of accurate calculation of the number up to date, the Act provides that notice of every future adoption of the Act of 1892 is forthwith to be given to the Local Government Board by the library authority, and, further, that "the library authority of every district in which the Act has already been adopted shall give the like notice within three months after the passing of this Act," which received the Royal assent on August 17, 1901.

Ireland is included as to the authority to make bylaws, but Scotland wholly excluded, as having had the required authority by an Act of her own for many years.

**Militia and Yeomanry.**—The Militia and Yeomanry Act (No. 14, U.K.) applies to all yeomen commissioned or enlisted after the passing of the Act on August 17, 1901, "the enactments relating to the general Militia" with the exception of the provisions as to preliminary training and the substitution of a period of annual training for not less than fourteen and not more than eighteen days for the period of not less

(*h*) 38 & 39 Vict. c. 55.

(*i*) 55 & 56 Vict. c. 53.



than twenty-one nor more than twenty-eight days required for the Militia by the Militia Act of 1882, (*k*) and of ten days for the period of further service required by that Act in the case of illegal absence. It is also provided that the period for militiamen enlisted in the "mobile Militia Artillery" after the passing of the Act may be such period not exceeding eighty-four days as may be prescribed under the Act of 1882. From the context, "the enactments relating to the general Militia," so comprehensively applied to the Yeomanry by the Act, cannot include the temporary Militia Ballot Suspension Act, 1865, (*l*) just continued for nearly the fortieth time, the short effect of which is that the very numerous Acts for raising the Militia, now and for very many years raised by voluntary enlistment, by compulsory ballot to fill vacancies—by conscription, in short—though at present suspended, may at any time be revived by order of his Majesty the King in Council. One of the provisions of these sleeping Statutes is that all men between the ages of eighteen and thirty (except peers, clergymen, articled clerks, and others) are to be placed on the lists for ballot, and another that any balloted man may have his place taken by a fit substitute. The Militia (to a number not exceeding 182,879, including 50,000 Militia Reserve) had £2,662,000 appropriated to it for the financial year ending in March, 1902, the Yeomanry having £375,000, and the Volunteers £1,230,000 for the same period.

**Public Health.**—The Isolation Hospitals Act (No. 8, E.) allows local authorities to transfer any hospitals provided by them to the county council of the district for use as an "isolation hospital" within the meaning of the Isolation Hospitals Act, 1893, (*m*) which defines the term as "a hospital for the reception of patients suffering from infectious diseases," and gives to the expression "infectious diseases" the same meaning as in the Infectious Diseases Act, 1889. (*n*) The Act of 1889 thus incorporated enumerates as "infectious diseases," "small-pox, cholera, diphtheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names, typhus, typhoid, enteric, relapsing, continued, or puerperal," and, in addition to these, "as respects any particular district any infectious disease to which this Act has been applied by the local authority in manner provided by this Act."

**Naval Works.**—The Naval Works Act (No. 39, B.E.) authorises the Treasury to issue such sums not exceeding in the whole £6,157,000 as may be required by the Admiralty for defraying the cost of certain naval works. The details are very precisely set out under thirty separate heads, relating to Gibraltar, Portland, Hong-kong, Portsmouth,

(*k*) 45 & 46 Vict. c. 49.

(*m*) 56 & 57 Vict. c. 68.

(*l*) 28 & 29 Vict. c. 46.

(*n*) 52 & 53 Vict. c. 72.

“Haulbowline Zymotic Hospital,” and other sources of expenditure. Of the £669,000 authorised for the commercial mole at Gibraltar “four-sevenths is to be repaid by the colony of Gibraltar in the form of an annuity of £14,000 per annum for fifty-seven years from the opening of the mole,” and information of similar minuteness is given in respect of other items.

**Revenue.**—The Finance Act (No. 7, U.K.) did not receive the Royal assent till July 26th, the Act of 1900 (*o*) having passed on April 9th, that of 1899 (*p*) on June 20th, that of 1898 (*q*) on July 1st, that of 1897 (*r*) on July 15th, that of 1896 (*s*) not till August 7th, and that of 1895 (*t*) on May 30th, so that the Act of 1901 was the latest but one in seven years. Like all Finance Acts, however, it operated retrospectively to the date of the Budget resolutions of the House of Commons which it carried into effect—*i.e.* to April. The Customs duty on tea, as increased from fourpence to sixpence per lb. in 1900, was continued, and so were the additional Customs duties imposed on tobacco, beer, and spirits, and the additional Excise duties on beer and spirits, the continuations being in each of the three cases until August 1, 1902. Income tax was imposed from April 6th at an increase of twopence on the shilling rate to which it was raised from eightpence in 1899, the new rate being only twopence less than that arising from the addition of the “war ninepence” to the normal sevenpence for the purposes of the Crimean War in 1855. There was also an entirely new set of duties on sugar, which had been previously untaxed since 1874, a duty on exported coal, and an alteration of the stamp duty on policies of sea insurance. The Stamp Act of 1891 (*u*) provides that “no policy of sea insurance made for time” may be made for more than twelve months. To escape the strictness of this enactment, certain “continuation clauses” had become common in these policies. In an insurance action (*v*) which came before him (between the date of the introduction of the Bill and that of the passing of the Act), Mr. Justice Bigham, in accordance with the direction of s. 14 of the Act of 1891, “took notice” of the invalidation of the policy by one of these continuation clauses, and ruled that the policy could not be sued upon. S. 11 of the new Act now validates a particular form of continuation clause, charges an additional sixpence on a policy containing such a clause, and enacts that if the risk covered by the continuation clause attaches, and a new policy is not issued covering the risk, the continuation clause shall be deemed to be a new and separate contract of insurance not covered by the stamp, “and the

(*o*) 63 & 64 Vict. c. 7.

(*p*) 62 & 63 Vict. c. 9.

(*q*) 61 & 62 Vict. c. 10.

(*r*) 60 & 61 Vict. c. 24.

(*s*) 59 & 60 Vict. c. 28.

(*t*) 58 & 59 Vict. c. 16.

(*u*) 54 & 55 Vict. c. 39.

(*v*) *Royal Exchange Assurance Corporation v. Sjørforsakrings Aktiebolaget Vega*, [1901] 2 K. B. 567.



policy shall be stamped in respect of that contract accordingly, but may be so stamped without penalty at any time not exceeding thirty days after the risk has so attached." The statutory "continuation clause" thus validated—

means an agreement to the following or the like effect—namely, that in event of the ship being at sea or the voyage otherwise not completed on the expiration of the policy, the subject-matter of the insurance shall be held covered until the arrival of the ship, or for a reasonable time thereafter not exceeding thirty days.

The new duty on exported coal, which forms so leading a feature of the Act, is charged at the rate of a shilling a ton, a rebate being allowed "on any coal the value of which free on board is proved to the satisfaction of the Commissioners of Customs not to exceed six shillings per ton," and the Treasury having a purely discretionary power to remit the duty on any coal exported before January 1, 1902, in pursuance of a contract made before April 19, 1901—the day after the Budget resolution imposing the duty. The present case of payment of duty by a colliery tenant at a royalty is thus provided for—

In any case where the person paying the duty shall be the tenant of the mines from which the coal shall have been produced, subject to the payment of a rent or royalty, varying with the selling price of such coal, and the coal shall have been sold at a price inclusive of the duty, then the amount of such duty so paid shall in the absence of any agreement to the contrary be deducted in ascertaining the amount of such selling price for the purpose of determining the amount of the said rent or royalty.

A schedule of six detailed provisions and of four modifications of the Customs Acts as to exportations of coal is added to the Act, and amongst the former is the important provision that, in the event of the duty being paid by a colliery proprietor upon coal sold by him free on board in pursuance of a contract made before April 19th last, the seller may, in the absence of agreement to the contrary, recover the duties so paid as an addition to the contract price, unless the purchaser shows that the coal has been applied for the purpose of fulfilling a contract made by him before April 19th last, for the sale of the coal at a specified price.

**Telegraphs.**—The Pacific Cable Act (No. 31, B.E.) (*w*) provides for the construction of a submarine cable from the island of Vancouver, on the West Coast of the Dominion of Canada, to Norfolk Island, in the Pacific Ocean, and thence by means of two cables to New Zealand and Queensland respectively, at an estimated cost of £2,000,000; and the

(*w*) See *infra*, p. 99.

Treasury is authorised to raise the amount by loan at 3 per cent. per annum interest. The cost is to be ultimately provided as to 5-18ths by his Majesty's Government, and as to 13-18ths by the Governments of Canada, the States of New South Wales, (x) Queensland, (y) and Victoria, and New Zealand, (z) any profits being divisible between his Majesty's Government and these Colonial Governments in the same proportion. The annual expenses are to be paid out of the receipts, and, so far as these are not sufficient, "out of moneys provided by Parliament." Of the surplus profits 13-18ths are to be paid to the Colonial Governments and the remainder as the Treasury direct. The construction and working of the cable are to be managed by a board, three members representing the mother country, two representing Canada, two representing New South Wales, Victoria, and Queensland, and one representing New Zealand. This board is to be a body corporate, vacancies being filled by the Treasury, and three members forming a quorum. Thus was it proposed to put a girdle of communication round the British Empire in even less than thirty minutes.

**Scotland.**—The Education (Scotland) (No. 9, S.) Act opens by the enactment, very similar to s. 4 of the English Act of 1876, (zz) that "it shall be the duty of every parent to provide efficient elementary instruction in reading, writing, and arithmetic for his children who are between five and fourteen years of age," the previous Scots law, as settled by Acts of 1872(a) and 1883,(b) imposing similar duty in respect of children between those ages who had not obtained certificates of ability to read and write, and of a knowledge of elementary arithmetic up to certain standards prescribed by the Scots Education Department for the time being. The Act also prohibits the employment of any child under twelve, or who, being over twelve, has not obtained exemption from the obligation to attend school from the school board of the district, which may grant such exemption "to individual children" in any case "where, after due inquiry in such case, the circumstances seem to justify" it "for such time and upon such conditions, if any, as to the amount and manner of further attendance at school until the age of fourteen, as the School Board shall think fit." A register of exemptions and the reasons for them is to be kept, and the Scots Education Department is empowered to call upon any school board to recall any particular exemption upon pain of having its Parliamentary grant withheld or reduced.

(x) See No. 48 of 1900, *infra*, p. 462.

(y) See No. 15 of 1900, *infra*, p. 510.

(z) See *infra*, pp. 229, 235, 254.

(a) 35 & 36 Vict. c. 62.

(zz) 39 & 40 Vict. c. 79.

(b) 46 & 47 Vict. c. 56.



**1902 (c)** Acts passed—Public General, 42 ; Local, 261.

Out of about three hundred public Bills submitted to Parliament during the long Session which closed just before Christmas, 1902, forty-two were placed on the Statute Book, comprising a Cremation Act, a Judicature Act, a Midwives Act, a Patents Act, a Shop Clubs Act, the Metropolis Water Act, and the important Licensing and Education Acts.

**Acts Continued.**—The Expiring Laws Continuance Act (No. 32, U.K.), which gave rise to an important debate during its passage through the House of Commons, again continued for one year more—that is, until December 31, 1903—such important Statutes as the Poor Rate Exemption Act, 1840 ; (*d*) the Militia (Ballot Suspension) Act, 1865 ; (*e*) the Ballot Act, 1872 ; (*f*) and the Employers' Liability Act, 1880. (*g*) The continued Acts numbered in all ninety-one, of which thirty-five were principal, and the remainder are amending Acts, the earliest of these being the Linen Manufactures (Ireland) Act of 1835, (*h*) and the latest the Local Government Act, 1896. (*i*)

**Birds.**—The Wild Birds Act (No. 6, U.K.) empowers a Court of Summary Jurisdiction, on conviction of any offence against the Wild Birds' Protection Acts, to order the bird or egg in respect of which the offence was committed "to be forfeited or disposed of as the Court shall think fit."

**Cremation.**—Lord Monkswell's Cremation Act (No. 8, E.S.), which is purely permissive, and did not come into force till April 1, 1902, enables burial authorities, all of which are either directly or indirectly elective, to establish under the designation of "crematoria" "buildings fitted with appliances for the purpose of burning human remains," under the supervision of the Local Government Board and the Home Office. No crematorium is to be constructed nearer to any dwelling-house than two hundred yards except with the consent of the owner, lessee, and occupier, nor within fifty yards of a highway nor in the consecrated part of the burial ground of any burial authority. The Home Office is directed to make regulations, (*k*) to be submitted to Parliament, "prescribing in what cases and under what conditions the burning of any human remains may take place." Severe penalties are imposed for the breach of the regulations, and to procure cremation for any criminal purpose is made punishable by penal servitude.

(c) This article is mainly a reproduction of the summary by the late Mr. Lely prefixed to the 1902 continuation of Chitty's "Statutes of Practical Utility."

(*d*) 3 & 4 Vict. c. 89.

(*e*) 28 & 29 Vict. c. 46.

(*f*) 35 & 36 Vict. c. 33.

(*g*) 43 & 44 Vict. c. 42.

(*h*) 5 & 6 Wm. IV. c. 27.

(*i*) 59 & 60 Vict. c. 9.

(*k*) See "Statutory Rules and Orders Revised," 1904, vol. iv. "Cremation."

Incumbents are freed from any obligation to perform a funeral service in the case of a cremated parishioner, but on their declining to do so "any clerk in Holy Orders of the Established Church, not being prohibited under ecclesiastical censure, may, with the permission of the bishop and at the request of the executor of the deceased person or of the burial authority or other person having charge of the cremation," perform such service.

**Education.**—The Education Act, 1901 (*l*) (Renewal) Act, 1902 (No. 19, E.), continued until July 31, 1903, the powers of a school board held illegal by the Court of Appeal in *Reg. v. Cockerton* (*m*), but legalised (on certain consents of local authorities being obtained) by the Act of 1901, to maintain certain evening schools.

The Education Act (No. 42, E.) (*n*) (which came into operation on March 26, 1903, "or such other day, not being more than eighteen months later, as the Board of Education might appoint (*o*)) constitutes entirely new "local education authorities" charged with the duties (1) of promoting "the general co-ordination of all forms of education"; (2) of supplying education other than elementary; and (3) of supervising elementary education within their respective areas. These authorities are, in connection with co-ordination and with education other than elementary, the county and county borough councils, and in connection with elementary education, the county councils, the county borough councils, the councils of boroughs with a population of over 20,000.

**Co-ordination.**—It is enacted by s. 17 (6) of the Act that before approving a scheme for the constitution of any of the education committees which are to work the Act under schemes made by the councils and approved by the Board of Education—

The Board of Education shall take such measures as may appear expedient for the purpose of giving publicity to the provisions of the proposed scheme, and before approving any scheme which provides for the appointment of more than one education committee, shall satisfy themselves that due regard is paid to the importance of the general co-ordination of all forms of education.

**Education other than Elementary.**—The county and county borough councils are directed to consider the education needs of their area and to take steps "to supply or aid the supply of education other than elementary." The expenses of this are to be defrayed in the first

(*l*) See *supra*, p. 79.

(*m*) [1901] 1 K. B. 726; 70 L. J. K. B. 441; and see *supra*, p. 80.

(*n*) See *infra*, p. 103, as to its application to London.

(*o*) In the majority of cases the Act came into operation in April, 1903, as suggested by a Board of Education Circular of March 4th.



instance out of the county share (commonly called the "whisky money") of local taxation, and secondly out of a rate of twopence in the pound, "or such higher rate as the county council with the consent of the Local Government Board may fix," and it is added that non-county borough and urban district councils may also, up to a penny in the pound rate, spend money as they think fit upon the supply of education other than elementary.<sup>(p)</sup> The schools thus formed or aided are to be strictly undenominational, and the Technical Instruction Acts, which covered much of the same ground as that now covered by Part II. of the Act, are repealed as superseded.

*Elementary Education.*—Part III. of the Act, which deals with elementary education, and was originally intended to be "adoptive" only, effects changes of the utmost importance. The rate-supported school boards which were elected *ad hoc* by the cumulative vote, and which since Mr. Forster's Elementary Education Act of 1870 (<sup>q</sup>) have been gradually increasing to the detriment of the voluntary schools, are superseded by the new local education authorities; and the voluntary schools are placed under the control of the same authorities, who become responsible for all secular instruction provided in such schools, and, with exceptions to be presently noticed, bear all the expense of maintaining them. These authorities are the county councils, the county borough councils, the borough councils in boroughs with a population of over 10,000, and the urban district councils in urban districts with a population of over 20,000. All of these councils will supervise elementary education within their respective areas, and the county and county borough councils will supervise both elementary education and education which is not elementary, through "education committees," to which all matters relating to the exercise of their powers, except that of rating or borrowing, are to stand referred.

*Education Committees.*—S. 17 (1) enacts that—

Any council having powers under this Act shall establish an education committee or committees, constituted in accordance with a scheme made by the council and approved by the Board of Education: Provided that if a council having powers under Part II. only of this Act determine that an education committee is unnecessary in their case it shall not be obligatory on them to establish such a committee.

Each committee must contain at least a majority of members appointed by the council on its own selection out of its own members, "unless, in the case of a county, the council shall otherwise determine"; some experts in education; at least one woman;

(p) See *infra*, p. 103.

(q) 33 & 34 Vict. c. 75.

and may if desirable contain members of school boards existing at the time of the passing of the Act as members of the first committee.

*Supervision of Schools.*—The education committees thus constituted supervise all the public elementary schools within their areas, the schools themselves being conducted by managers, who will not exceed six in number for each school. Where the school was a board school before the Act, or is newly provided by the local education authority, and the county council is the local education authority, the council is to appoint not more than four managers, and the “minor local authority”—*i.e.* “the council of any borough or urban district, or the parish council or parish meeting of a parish which appears to the county council to be served by the school”—is to appoint not more than two; and where the local authority are the council of a borough or urban district, they may appoint for a school provided by them “as many managers as they may determine.” In the case of voluntary schools there will be at least a theoretical retirement of all the existing managers—who in many cases exceed in number the maximum of six—and there will be not more than four “foundation managers” appointed under the trust deed regulating each school, or if there be no trust deed or an insufficient one, in accordance with an order—to suit each case—to be made by the Board of Education on the application of the trustees, owners, or managers, and two official managers. If the local education authority be a county council, one of these official managers is appointed by that council, and the other by the “minor local authority”—*i.e.* by the council of the borough, urban district, or parish which appears to the county council to be served by the school. Both kinds of schools—the voluntary and the former board school—will be controlled and maintained out of the rates by the local education authority, with the assistance in each case of a “Parliamentary aid grant” dependent upon efficiency, but with the important exception by s. 7 (d) of the Act in the case of the voluntary schools that—

The managers of the school shall provide the school-house free of any charge, except for the teacher’s dwelling-house (if any), to the local education authority for use as a public elementary school, and shall, out of funds provided by them, keep the school-house in good repair, and make such alterations and improvements in the buildings as may be reasonably required by the local education authority: Provided that such damage as the local authority consider to be due to fair wear and tear in the use of any room in the school-house for the purpose of a public elementary school shall be made good by the local education authority.

*Religious Instruction.*—The Act, though in s. 4 it deals with religious instruction in schools within Part II. where education other than



elementary is conducted, is silent as to religious instruction in elementary schools provided by the local education authority, but deals in a special manner with religious instruction in schools not so provided by s. 7 (6)—the “Kenyon-Slaney clause” as amended by the House of Lords—which is as follows:—

Religious instruction given in a public elementary school not provided by the local education authority shall, as regards its character, be in accordance with the provisions (if any) of the trust deed relating thereto, and shall be under the control of the managers: Provided that nothing in this sub-section shall effect any provision in a trust deed for reference to the Bishop or superior or other denominational authority, so far as such provision gives to the Bishop or authority the power of deciding whether the character of the religious instruction is or is not in accordance with the provisions of the trust deed.

**Intoxicating Liquors.**—The Licensing Act, 1902 (No. 28, E.), (*qq*) greatly amends the law of (1) drunkenness, (2) licensing, and (3) clubs. Any person found drunk and incapable in a public place may be apprehended, whereas before the Act such a person could be apprehended only in case of disorderly or dangerous drunkenness. There are elaborate provisions for the separation of habitually drunken spouses by justices of the peace, the Summary Jurisdiction (Married Women) Act, 1895, (*r*) being made applicable, and for the cutting off the supply of liquor to habitual drunkards. “Black lists” of such persons are to be formed by sending notices of their convictions to persons holding licences in their districts, and fining the licensed person who allows any person on such a list to be served with liquor. Any person convicted of drunkenness may be required to enter into a recognisance with or without sureties for good behaviour, and by s. 4 of the Act (which is perhaps the most important of all under its first part), the ordinary burden of proof is shifted from the prosecution to the defence by the enactment that—

Where a licensed person is charged with permitting drunkenness on his premises, and it is proved that any person was drunk on his premises, it shall lie on the licensed person to prove that he and the persons employed by him took all reasonable steps for preventing drunkenness on the premises.

As to licensing law, the record of convictions on licences is done away with, the control of justices over the structure of licensed premises and occasional licenses is greatly extended, and the requirement of confirmation of the grant of new licences, formerly applicable only to licences for the sale of liquor to be drunk on the premises, becomes

(*qq*) See *infra*, p. 111.

(*r*) 58 & 59 Vict. c. 39.

applicable also to sale for consumption off the premises of the licensed person. Notices of intended applications for temporary transfers will have to be given to the police, and on the hearing of applications for permanent transfers "the agreement or other assurance, if any, under which the licence is to be transferred," must be produced to the licensing justices. It is also provided that the general annual licensing meetings, or Brewster Sessions as they are commonly called, which have hitherto been held between August 20th and September 14th (except in Middlesex and Surrey, where they have been held in March), and were not held at all in 1902, shall be uniformly held within the first fourteen days in February in each year; that being interested in a railway company is not to disqualify a justice from acting under the Licensing Acts; that no clerk of licensing justices may conduct licensing proceedings in the district for which he is clerk (though he may prepare forms), under a penalty of £100 or less; and that the appeal costs of a licensing justice whose decision is appealed against are to be paid out of county or borough funds.

The third part of the Act is concerned with the registration of clubs. Every club of any description "which occupies a house or part of a house, or other premises which are habitually used for the purposes of a club, and in which any intoxicating liquor is supplied to members or their guests," must be registered through its secretary by the clerk to the justices of the petty sessional division within which it is situate, the secretary being bound to furnish particulars as to mode of election, terms of subscription, closing hours, and other matters to the justices' clerk in January, 1903, and every succeeding January. The supply of liquor in an unregistered club is punishable by fine or imprisonment, or both, and the supply for consumption off the premises, except to a member on the premises, by fine up to £50.

A club may be struck off the register by a Court of Summary Jurisdiction on all or any of eight grounds, including the grounds of frequent drunkenness on the club premises, of habitual admission merely for drinking purposes, or without an interval of at least forty-eight hours between nomination and admission; and also including the ground "that the supply of intoxicating liquor to the club is not under the control of the members or the committee appointed by the members." Search warrants may be granted by a justice of the peace if satisfied that there is reasonable ground for supposing a registered club to be so managed as to constitute a ground for striking it off the register.

**Judicature.**—The Supreme Court of Judicature Act (No. 13, E.) authorises the Court of Appeal to sit in three divisions instead of in two, as authorised by the Judicature Acts.

**London.**—The Labour Bureaux (London) Act (No. 13) enables any



London borough council to establish at the expense of the rates "labour bureaux" for the purpose of supplying information, either by the keeping of registers or otherwise, respecting employers who desire to engage workpeople, and workpeople who seek employment.

The Metropolis (Water) Act (No. 41) establishes a water board to take over the undertakings of the nine London water companies, with all their rights and liabilities. Fourteen members of the board are appointed by the London County Council, and others by the borough councils and various urban districts. The compensation, which may be paid in "water stock," is to be settled, in default of agreement between the board and the companies, by a Court of Arbitration.

**Midwives.**—The Midwives Act (No. 17, E.) enacts that after April 1, 1905, no woman may describe herself as a "midwife," and that after April 1, 1910, no woman may "habitually and for gain attend women in childbirth otherwise than under the direction of a qualified medical practitioner," without a certificate of competence from a Central Midwives Board established by the Privy Council. Existing midwives, however, may claim to be certified at any time within two years from April 1, 1903. There is also to be a supervision of midwives by county and county borough councils. The Act does not apply to registered medical practitioners.

**Militia and Yeomanry.**—The Militia and Yeomanry Act (No. 39, U.K.) enables the War Office to relax the training obligations of militia reservists, and applies the provisions of the Militia Acts to the Yeomanry.

**Musical Copyright.**—The Musical (Summary Proceedings) Copyright Act (No. 15, U.K.)<sup>(s)</sup> empowers a Court of Summary Jurisdiction, on the application of the owner of the copyright in any musical work, to seize pirated copies of it and order them to be destroyed or delivered to the owner of the copyright; and also empowers a constable to seize hawked pirated copies without warrant on request of such owner. Shortly after the passing of the Act, the powers under it were greatly weakened by the decision of the High Court<sup>(t)</sup>, to the effect that it was a necessary preliminary to its enforcement to serve a summons on the person from whom copies had been seized.

**Patents.**—The Patents Act (No. 34, U.K.)<sup>(u)</sup> directs the Patent Office officials to search the registers for a period of fifty years, on any application for a patent, to discover whether the subject-matter has been patented before, and on such discovery to inform the applicant, and to consider what notice should be given to the public; and amends the law of compulsory licences, by enabling any person complaining that

<sup>(s)</sup> See *infra*, p. 134.

<sup>(t)</sup> *Francis, Day and Hunter, ex parte* (1903), 88 L. T. 806.

<sup>(u)</sup> Repealed by 7 Edw. VII. c. 29, *infra*, p. 156.

the reasonable requirements of the public are not satisfied by the patentee, to procure an order for a compulsory licence from the Judicial Committee of the Privy Council, the Board of Trade having previously had sole jurisdiction in the matter.

**Police.**—The Police Reservists Act (No. 10, E.S.) enacts that the period of service of a police reservist during the late war may, if the police authority think fit, be reckoned in the computation of approved service for the purpose of any pension or gratuity under the Police Acts.

**Post Office.**—The Mail Ships Act (No. 36, B.E.) alters the nature of the security to be given to the owner of a ship engaged in the postal service before a judge of the High Court in chambers.

**Revenue.**—The Finance Act (No. 7, U.K.) raised the income tax from 1s. 2d. to 1s. 3d. (reduced to 11d. by the Act of 1903) in the pound, and continues the 6d. duty on tea, and additional customs and excise duties on tobacco, beer, and spirits. It also limits to 10s. the duty on transfers for effectuating the retirement of a trustee although no new trustee is appointed. But the main feature of the Act consisted in the new imposition of a small duty (taken off by the Act of 1903) (*v*) on imported corn and flour, practically equivalent to 1s. per quarter "registration fee" imposed by Sir Robert Peel at the time of the general repeal of the Corn Duties in 1846, and taken off by the late Lord Sherbrooke (then Mr. Robert Lowe) in 1869.

**Shop Clubs.**—The Shop Clubs Act (No. 21, U.K.) creates two criminal offences on the part of the employers of workmen in connection with a workshop, factory, dock, shop, or warehouse. The first offence is that of requiring as a condition of employment that the workman should cease to belong to a friendly society, or that the only friendly society he belongs to should be the "shop club," or "thrift fund"; and the second that of requiring that the workman should join a shop club or thrift fund unless it be registered under the Friendly Societies Act and certified by the registrar as (1) affording to the workman "benefits of a substantial kind in the form of contributions or benefits at the cost of the employer in addition to those provided by the contributions of the workman," and (2) not being a society which annually or periodically divides its funds. The offences are punishable by fine. There is a provision for compensation to a workman ceasing to be a member of a shop club on leaving his employment.

**Telegraphs.**—The Pacific Cable Amendment Act (No. 26, B.E.) substitutes the Government of the Commonwealth of Australia for the Governments of New South Wales, Queensland, and Victoria in the Pacific Cable Act, 1901. (*w*)

(*v*) See *infra*, p. 109.

(*w*) See *supra*, p. 90.



**Scotland.**—The Immoral Traffic (Scotland) Act (No. 11, S.) makes further provision for the punishment of persons trading in prostitution in Scotland by enacting that any man living on the earnings of prostitution or soliciting for immoral purposes in any public place is to be liable on conviction before a Court of Summary Jurisdiction for any term not exceeding three months with hard labour—in this and other points following the English Vagrancy Act, 1898 (*x*)—which, however, does not apply to Ireland—and by its condemnation of the offender, not to imprisonment *eo nomine*, but to the status of a “rogue and vagabond,” might possibly eventuate in his sentence as an “incorrigible rogue” to a public whipping. The men at whom the Act of 1898 was aimed were keenly alive to its provisions, some of them quickly departing with their companions for Scotland, and at least thirty migrating to Australia and the Cape. (*y*)

**Ireland.**—The Licensing (Ireland) Act (No. 18, I.) directs that, until after 1907, no licence shall be granted for the sale of intoxicating liquors, whether for consumption on or off the premises, except (1) by way of renewal, (2) for an hotel, or (3) for a railway refreshment-room.

**1903** (*z*)    Acts passed—Public, 47 ; Local and Personal, 263 ;  
Private, 2.

Forty-seven public Acts of Parliament (of which four were confined to England and six to Ireland) became law in the session which was prorogued on August 14, 1903.

**Army and Navy.**—The Army (Annual) Act (No. 4, B.E.) continued the Army Act for one year more, and legalised a standing army of 235,761 men (exclusive of those actually serving in India), as against the 420,000 legalised by the corresponding Act of 1902. (*a*)

The Military Lands Act (No. 47, U.K.) enables county and borough councils to hire lands at the request of one or more Volunteer corps for not less than twenty-one years.

The Military Works Act (No. 29, B.E.) authorised an expenditure up to £5,000,000 (to which a sum up to £500,000 realised by the sale of existing unnecessary barracks could be added) on defence works, barracks (including £2,300,000 on barracks in South Africa), ranges, and “staff and contingencies.”

The Naval Works Act (No. 22, B.E.) authorised an expenditure up to £7,996,000 on (1) enclosure and defence of harbours at Gibraltar,

(*x*) See *supra*, p. 17.

(*y*) See *Times* of October 12, 1898.

(*z*) This article is mainly a reprint of two articles by the late Mr. J. M. Lely in the *Times* of January 1 and 30, 1904, on “Legislation of the Year 1903.”

(*a*) 63 & 64 Vict. c. 5.

Portland, Dover, and Malta; (2) adapting naval ports to needs of the fleet at Keyham, Hong-kong, Sheerness, and other places; and (3) "Naval Barracks, etc.," including gunnery schools, magazines, torpedo ranges, and hospitals; and the Naval Forces Act is intended greatly to strengthen the Naval Volunteer Reserve by removing the existing statutory restrictions on its numbers (30,000 under an Act of 1859, (b) and an additional 15,000 under an Act of 1900) (c) and by authorising employment in the Navy for a shorter term than twelve years on conditions of completing that term in the Reserve.

**Child Employment.**—For the purposes of the Employment of Children Act (No. 45, U.K.), (d) "child" means a person under fourteen; "employment" includes employment in any labour exercised by way of trade or for gain, whether to the child or any one else; "local authority" means in England the Common Council in the City of London, the council of a borough with a population of over 20,000, or the county council; in Scotland (though not for all purposes) the school board; and in Ireland, in an urban district with a population of over 10,000, the district council, and elsewhere the county council; and "street trading" includes "the hawking of newspapers, matches, flowers, and other articles, playing, singing, or performing for profit, shoe-blackening, and any other like occupation carried on in streets or public places." It is of great importance to bear these definitions in mind, and also the fact that though "child" means a child under fourteen where no special age is mentioned, there are special provisions affecting children under the ages of ten, eleven, and sixteen respectively.

Any local authority may (not must) by bylaw prescribe ages and hours of employment for all children as to all occupations or any occupation, may prohibit or only conditionally permit the employment of children in any specified occupation, and may regulate street trading by persons under sixteen, having special regard to the employment of girls therein. Subject to variation of hours by bylaw, no child is to be employed between 9 p.m. and 6 a.m. No child under eleven is to be employed in street trading, no half-timer under the Factory Act is to be employed in any other occupation, and no child is to be employed in any occupation likely to be injurious to him, a medical certificate as to likelihood of injury being made admissible evidence.

Bylaws will require confirmation by the Secretary of State, who is not to confirm them until at least thirty days after publication by the local authority, and also after considering any objections which may be addressed to him by persons affected, a discretionary power to order a local inquiry being given. Employment in contravention of the Act is summarily punishable by fine up to 40s., or in the case of a second or

(b) 22 & 23 Vict. c. 40.

(c) 2 Edw. VII. c. 5.

(d) See *infra*, p. 116.



subsequent offence, £5; parents or guardians conducing to the offence by default or neglect being liable to the like fines, agents or workmen offending being liable as if they were employers, and employers (as under the Factory Act) being entitled to exempt themselves on proof that they had used due diligence to comply with the Act, and that some other person committed the offence without their knowledge or connivance. The general limitation of six months after an offence within which summary proceedings must be commenced, is reduced to three, and any justice of the peace may authorise an officer of the local authority to enter a place of employment for the purpose of detection, if it appears that there is reasonable cause to believe that a child is being there employed in contravention of the Act.

Bylaws under the Act are not to apply to any child above twelve employed under the Factory Act or the Mines Regulation Acts; but the regulation by the Cruelty Act of 1894(*e*) of the employment of children in public entertainments becomes subject to considerable amendment. S. 3 of that Act—by which the general restriction of the employment of children under eleven is mitigated by the authorisation of a petty sessional (or in Scotland a school board) licence for the employment of any child under seven—is amended by prohibiting the grant of a licence to any child under ten, and by investing any officer charged with the execution of the new Act with all the powers of a factory inspector under that Act to enter and examine any place of public entertainment.

**County Courts.**—The County Courts Act (No. 42, E.) came into operation on January 1, 1905. It extended the jurisdiction of county courts from £50 to £100, and also altered the number of county court jurors from five to eight.

**Criminal Law.**—The Poor Prisoners' Defence Act (No. 38, E.), which passed on August 14, 1903, and came into force on January 1, 1904, enacts that where it appears that "it is desirable in the interests of justice" that a prisoner "should have legal aid in the preparation and conduct of his defence, and that his means are insufficient to enable him to obtain such aid," either the committing justices on committal, or the judge of assize or chairman of quarter sessions at any time after reading the depositions, may certify that he ought to have such aid, with the result that he will be entitled to have solicitor and counsel assigned to him. The original intention was to follow the precedent of the Tudor Act, (*f*) by which civil actions have long been prosecuted and defended on behalf of paupers by unpaid lawyers; but the Act directs that all expenses, including the fees of solicitor and counsel, are to be allowed and paid in the same manner as the expenses of a prosecution

(*e*) 57 & 58 Vict. c. 41.

(*f*) 11 Hen. VII. c. 12.

for felony, subject, nevertheless, to rules which "may be made in the same manner and subject to the same conditions as rules under the Prosecution of Offences Act, 1879" (*g*)—that is, by the Attorney-General with the approval of the Lord Chancellor and a Secretary of State—after a draft has been before each House of Parliament for not less than forty sitting days, and to regulations as to rates of payment which may be made by a Secretary of State alone at any time. The regulations were made on December 30, 1903, and followed by rules made and duly laid before Parliament in the spring of 1904. (*h*)

**Education.**—The Education Act (No. 10, E.) empowers any local education authority, *i.e.* any county council, county borough council, or council of a borough or urban district with a population over 10,000 or 20,000 respectively, to borrow with the consent or sanction of the Local Government Board such sums as, in the opinion of the Board, are required to provide a working balance for carrying the Act of 1902 (*i*) into effect.

The Elementary Education Amendment Act (No. 13, E.) enables the Board of Education to make rules for certifying any establishment for boarding and lodging defective or epileptic children, although such establishment may exceed the limit of fifteen children or four buildings required by the Elementary (Defective and Epileptic) Children Act, 1899 (*j*). Rules under the Act have to be laid before Parliament, and either House may annul them within thirty days after their submission to Parliament.

The Education (London) Act (No. 24) did not come into operation until May 1, 1904, or such other day, not being more than twelve months later, as the Board of Education might appoint. By five short sections, with modifications expressed therein and in a schedule of eleven short paragraphs, the Act of 1902, which abolished the school boards elected *ad hoc* by the cumulative vote and substitutes for them county and other councils elected by single voting for the discharge of general municipal functions, is extended and applied to London "so far as applicable." The principal modifications of the Act of 1902 (*k*) are these. The number of managers of elementary schools provided by the county council, and the manner of grouping schools under one body of managers within any borough, after consultation with the county council and approval by the Board of Education, are to be determined by the council of the borough. The site of any new school to be so provided is not to be determined upon until after consultation with the county council. "Due regard shall be had in selecting managers to the inclusion of women in the proportion of not

(*g*) 42 & 43 Vict. c. 22.

(*i*) See *supra*, p. 93.

(*h*) See Statutory Rules and Orders, 1904, p. 123.

(*j*) See *supra*, p. 29.

(*k*) See *supra*, p. 93.



less than one-third of the whole body of managers, and, in the case of the first body of managers, also of members chosen from the then existing bodies of managers." Managers are not to be appointed for more than three years, but are to be re-eligible. The limit under the Act of 1902 of the rate for the purpose of higher education to 2*d*. in the pound is not to apply where the county council delegate any powers to their Education Committee, and the proceedings of such committee are not required to be submitted to the council for approval; the minutes of the committee are to be subject to the same inspection by the ratepayers as the minutes of the council itself are.

**Fisheries.**—The Board of Agriculture and Fisheries Act (No. 31, E.S.), transfers to the Board of Agriculture, which was established in 1889, (*l*) all the powers and duties of the Board of Trade under nearly thirty Freshwater and Sea Fisheries Regulation Acts, and directs that the Board of Agriculture is to be styled the "Board of Agriculture and Fisheries."

**Local Government.**—The County Councils (Bills in Parliament) Act (No. 9, E.S.), by extension of the Local Government Acts of 1888 (*m*) and 1889 (*n*) respectively, confers on county councils a power of promoting Bills in Parliament in addition to the existing power under those Acts of opposing them. The Borough Funds Act (E.) greatly amends the procedure under the Borough Funds Act, 1872 (*o*) (commonly called "Leeman's" Act), by which borough and urban district councils may promote Bills in Parliament, but newly gives such councils a free hand in opposing Bills without the consent of owners and ratepayers as required by the Act of 1872. In relation to the promotion of a Bill, no expense is to be charged by the council upon their constituents without full notice given within seven days from the first deposit of the Bill in either House of Parliament and without the sanction of a public meeting of electors, to whom the chairman is to give such explanation of the Bill as he thinks expedient. The decision of the meeting is to be final unless a poll is required by not less than a hundred electors, or one-twentieth of their number, or by the council if the meeting decide against the resolution proposed.

The Local Government (Transfer of Powers) Act (No. 15, E.), though permissive only, may turn out to be the most important Act of the Session. General, tentative, unused, and almost unknown powers of decentralisation have long been entrusted to the Local Government Board by an enactment of the Local Government Act, 1888, (*p*) that—

It shall be lawful for the Local Government Board to make . . . a Provisional Order for transferring to county councils any such powers . . .

(*l*) 52 & 53 Vict. c. 60.

(*m*) 51 & 52 Vict. c. 41.

(*n*) 52 & 53 Vict. c. 50.

(*o*) 35 & 36 Vict. c. 91.

(*p*) 51 & 52 Vict. c. 41.

of the Privy Council, a Secretary of State, the Board of Trade, the Local Government Board, the Board of Education, or any other Government department as are conferred by or in pursuance of any statute and appear to relate to matters within the county, and to be of an administrative character . . . and such order shall make such exceptions and modifications as appear to be expedient.

The order is directed to be laid in draft before the Government department concerned for approval and requires confirmation by public Act of Parliament. The new Act, without repealing the above enactment of 1888, directs that it shall have a particular as well as a general application—that is, that it shall authorise the transfer of the powers mentioned in the Act of 1888 to the council of a particular county or county borough as well as to such councils generally. The order, however, cannot be made except on the application of the county to be affected, and is not to be proceeded with in case of objection by a majority of those borough or urban district councils, rural district councils, boards of guardians within the area proposed to be affected, to which the Board is directed to give notice of the proposed transfer, as being in the opinion of the Board likely to be affected by it. An application under this Act may be made by any county council or county borough council at any time.

**London Street Collections.**—The Metropolitan Streets Act (No. 17, E.) enables the Commissioner of the Metropolitan Police with the approval of a Secretary of State, and the Commissioner of the City Police with the like approval and also with the consent of the Lord Mayor and Aldermen, to make regulations to be observed within a six-mile radius from Charing Cross with respect to the places where, and the conditions under which, persons may collect money in any street for charitable or other purposes.

**Mines.**—The Coal Mines (Certificates) Act (No. 7, U.K.) amends a provision of the Coal Mines Regulation Act of 1887, (*q*) which makes at least five years' practical experience an essential qualification for a manager's or under-manager's certificate. There is a substitution of three for five years in cases where the applicant has studied for at least two years at any educational institution to be approved of by a Secretary of State, or has taken a degree of any university to be so approved of which includes scientific and mining subjects.

**Motor-Cars.**—The Locomotives on Highways Act, 1896, (*r*) defines a "light locomotive" as—

Any vehicle propelled by mechanical power if it is under three tons in weight unladen and is not used for the purpose of drawing more than one

(*q*) 50 & 51 Vict. c. 58.

(*r*) 59 & 60 Vict. c. 36.



vehicle (such vehicle with its locomotive not to exceed in weight, unladen, four tons), and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause.

The Motor-Car Act (No. 36, U.K.), which came into operation on January 1, 1904, and is limited to expire on December 31, 1906 (s), gives to "motor-car" the same meaning as that of "light locomotive" in the above enactment, except that (1) for the purpose of new registration provisions "motor-car" is not to include a vehicle drawn by a motor-car; and (2) the weights mentioned therein may be increased as respects any class of vehicle by Local Government Board regulations.

The reckless, negligent, or too rapid driving (at whatever speed) on a public highway or roadway to which the public are granted access is an offence under the Act, and any police constable may apprehend without warrant a driver who has offended within his view if he refuses to give his name and address or produce the licence required by the Act, or if the car cannot be identified under the Act. Every car must be registered with the council of a county or county borough, with a separate number and mark indicating it fixed on the car or vehicle drawn by it, or both, and on payment of a fee of 5s. each for motor-cycles and 20s. each for other cars. Manufacturers and dealers may obtain general identification marks for use on trial. As to licences, it is enacted that—

A person shall not drive a motor-car on a public highway unless he is licensed for that purpose, and a person shall not employ any person who is not so licensed to drive a motor-car.

The council of a county or county borough shall grant a licence to drive a motor-car to any person applying for it who resides in that county or county borough on payment of a fee of 5s., unless the applicant is disqualified under the provisions of this Act.

The only absolute disqualifications are (1) being under seventeen years of age, or, for driving motor-cycles only, of fourteen years or under; and (2) already holding a licence still in force. But a person convicted of an offence under the Act, or of any offence in connection with the driving of a motor-car (other than a first or second offence consisting solely of exceeding any limit of speed fixed under the Act) may be declared to be disqualified by the Court before whom (*sic*) he is convicted for a period limited only by the discretion of the Court. The fine for any offence under the Act may be up to £20, or in the case of a second or subsequent conviction up to £50, with the alternative of imprisonment up to three months, but there will be an appeal to quarter

(s) Continued by Expiring Laws Continuance Acts.

sessions against (1) imprisonment, (2) any fine above 20s.; and (3) any order of disqualification.

The enforcement of the maximum speed of fourteen miles an hour under the Act of 1896 (as reduced by Local Government Board regulations under that Act to twelve miles an hour) is replaced by the enactment that—

A person shall not, under any circumstances, drive a motor-car on a public highway or roadway to which the public are granted access at a speed exceeding twenty miles an hour, and, within any limits or place referred to in regulations made by the Local Government Board with a view to the safety of the public, on the application of the local authority of the area in which the limits or place are situate, a person shall not drive a motor-car at a speed exceeding ten miles an hour.

Contravention of this enactment is punishable by a fine up to £10 for a first offence, £20 for a second, and £50 for any subsequent offence; but there cannot be a conviction merely on the opinion of one witness nor unless the offender was warned of an intended prosecution at the time of the offence, or unless notice of it was sent to him or to the registered owner of the car within reasonable time after the commission of it. The Local Government Board may also prohibit or restrict the driving of any motor-car on any highway which does not exceed sixteen feet in width, "or on which ordinary motor-car traffic would, in their opinion, be especially dangerous." Local authorities are to give public notice of any such prohibitions or restrictions or limitations of speed, and also "subject to regulation as to size and colour" to be made by the Board, to set up signposts denoting dangerous corners, cross-roads, and precipitous places. In case of accident to any person or to a horse or vehicle in charge of any person, owing to the presence of a motor-car on a road, the driver is directed to stop and give his and the owner's name if required, on pain of a fine up to £10 for a first offence, £20 for a second, and £20 for any subsequent offence, or imprisonment up to one month. All common law and statutory liabilities of owners are expressly left unaffected—a very extensive saving in view of the wide civil liability for negligence and of the direction of the Act of 1896 that a motor-car, or "light locomotive" as it is there called, is to be deemed a "carriage" within the meaning of any Act whatever—and both the Act of 1896 and the new Act are declared to apply to persons in the public service of the Crown.

**Patriotic Fund.**—The Patriotic Fund Reorganisation Act (No. 20, U.K.) reorganises the administration of the fund by entrusting it to a body corporate consisting of twelve members appointed by the Crown, the lords-lieutenant of counties, the chairmen of the county councils,



the mayors of county boroughs in England, Wales, and Ireland, and the provosts of Scots burghs with a population up to 50,000, and co-opted members up to the number of seven.

**Pistols.**—The Pistols Act (No. 18, E.S.) makes it unlawful to sell or let a pistol (except an antique sold for curiosity or ornament) to any person not producing a gun or game licence or proving that he is entitled to carry a gun without a gun or game licence for scaring birds or otherwise under the Gun Licence Act, or that being a householder he will either use the pistol only at home or is about to go abroad for not less than six months, and produces a vouched statement to that effect. An entry of each sale or letting must be made in a book to be produced for inspection on the request of any officer of police or Inland Revenue. Any person contravening any of these provisions may be fined up to £5, and a similar fine may be incurred by any person selling or delivering a pistol to any person under the age of eighteen not legally liable for carrying a gun without a gun or game licence, the young person himself being liable up to £5 for buying, hiring, using, or carrying the pistol, as to the forfeiture of which the Court inflicting the fine may make such order as may seem fit. Lastly, any person who knowingly sells a pistol to any person intoxicated or not of sound mind may be fined up to £5 or be imprisoned with or without hard labour up to three months.

**Poor.**—The Poor Law (Dissolution of School Districts and Adjustments) Act (No. 19, E.) applies to England generally the power of the Local Government Board given as respects London in 1869 to dissolve the poor law school districts authorised to be formed by the Poor Law Amendment Act of 1844 (*l*). The Act also enables any adjustments of property, income, and liabilities, so far as affected by any alteration of poor law areas or authorities, to be settled by agreement between the authorities concerned, or in default of agreement by arbitration, instead of by the Local Government Board.

**Railways.**—The Railways (Electrical Power) Act (No. 30, U.K.) empowers the Board of Trade on the application of any railway company, and “with the object of facilitating the introduction and use of electrical power on railways,” to make orders for all or any of the purposes specified in the Act. These purposes are—(1) the use of electricity besides or instead of any other motive power; (2) construction of electrical works on the company’s land; (3) the supply of electrical power or plant by agreement with some other company; (4) consequential modification of working agreements; (5) subscription by the railway company to any electrical undertaking; (6) the public safety; (7) the issue of new capital; and (8) regulation of any ancillary matters.

Orders may authorise the acquisition of land, but an order authorising such acquisition compulsorily will require confirmation by Act of Parliament, and before making any order the Board of Trade must be satisfied that public notice of the application for it has been given, and must consider any objections by "the council of any county, any local authority, or other person" and give to those by whom the objection is made an opportunity of being heard with the view of declining to make the order or of so modifying it as to remove the objection, if the Board decide that the objection should be upheld. Independent powers of the companies are expressly saved; and it may be pointed out that the Railways Clauses Consolidation Act, 1845, (*u*) which applies to the vast majority of the lines, empowers every company to which it applies "to use and employ locomotives, engines, or other moving power, and carriages and waggon to be drawn or propelled thereby." The Act encourages the electrification of steam railways, which has been already adopted on many lines.

**Revenue.**—The Finance Act (No. 8, U.K.) repealed as from July 1, 1903, the small duties on corn and flour imposed by the Act of 1902, (*v*) continued the duty on tea at 6*d.* in the pound, and continued also the additional duties of customs on tobacco, beer, and spirits, and of excise on beer and spirits imposed by the Act of 1900, (*x*) all until August 1, 1904. Income tax for the year beginning on April 6th was charged at the rate of 11*d.*—a reduction of 4*d.*

The Revenue Act (No. 46, U.K.), which came into operation on September 1, 1903, contained a series of provisions for the relief of the taxpayer, the most important being as follows:—The duty on imported molasses to be used solely for feeding stock became no longer payable if such conditions as may be imposed by the Commissioners of Customs for the protection of the revenue are complied with. The bond for the due exportation of coal or its carriage coastwise became exempt from stamp duty. A policy of insurance on a ship whilst under construction or on repair, if stamped as a voyage policy, became sufficiently stamped, though made for more than twelve months, and is not to be deemed a sea policy for time; and the stamp duties of 30*s.* and 5*s.* on Army and Navy commissions ceased to be payable. The house duty on houses let in tenements or flats as separate dwellings was made subject to the abatement and reductions that the value of a dwelling of less value than £20 annual value is excluded from the calculation of the duty on the house, and the rate of duty between values of £20 and £40 or £40 and £60 is reduced from 9*d.* in the pound to 3*d.* and 6*d.* respectively. The reductions by virtue of a

(*u*) 8 & 9 Vict. c. 20.

(*v*) See *supra*, p. 99.

(*x*) See *supra*, p. 67.



proviso borrowed from an Act of 1890 are not to take effect without the production to the Tax Commissioners of a certificate by the medical officer of health of the district that the house is so constructed as to afford suitable accommodation for each of the families or persons inhabiting it, and that due provision is made for their sanitary requirements.

**Sheep Scab.**—The Diseases of Animals Act (No. 43, U.K.) extends the very numerous powers of the Board of Agriculture to make orders under the Act of 1894(*y*) for the better prevention of disease among animals to a power to prescribe, regulate, and secure the periodical treatment of all sheep by effective dipping or by the use of some other remedy for sheep scab. Inspectors of the Board, and, if so ordered by the Board, of the local authority, may enter any premises and examine any sheep therein, and owners and shepherds are directed to comply with all their reasonable requirements. The local authorities are empowered to provide portable dipping tanks, or, with the sanction of the Board, dipping places, and to allow public use of them; but no dipping place is to be used to the detriment of water for drinking or other domestic purposes.

**South African Loan.**—The South African Loan and War Contribution Act (No. 27, B.E.) empowers the Treasury to guarantee interest at not more than three per cent. on any Transvaal loan up to £35,000,000 for the purposes mentioned in the Act, with the amounts applicable to each purpose—*e.g.* for compensating loyalists in Cape Colony and Natal, £2,000,000; for acquisition of existing railways in the Transvaal and Orange River Colony, £14,000,000; for repatriation and compensation in those Colonies, £5,000,000; and for new railways, land settlement, and other new public works therein, £10,000,000.

**Sugar Convention.**—The Sugar Convention Act (No. 21, U.K.) gives effect to the International Convention against bounty-fed sugar by the enactment that “where it is reported by the Permanent Commission [established by the Convention] that any . . . bounty is granted in any foreign country on the production or export of sugar, his Majesty may . . . make . . . an order prohibiting sugar from that foreign country to be imported into the United Kingdom. . . .”

**Workmen's Housing.**—The Housing of the Working Classes Act (No. 39, E.) substitutes eighty for sixty years as the maximum period for which a loan may be sanctioned by the Local Government Board for housing purposes, authorises the transfer of any powers of the Home Office respecting them to the Local Government Board, and imposes a set of rehousing obligations to operate for the provision of dwelling accommodation for persons of the working class in cases where

land is acquired under statutory powers. For the purpose of these obligations, the expression "working class" includes—

Mechanics, artisans, labourers, and others working for wages; hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others, except members of their own family, and persons other than domestic servants whose income in any case does not exceed thirty shillings a week, and the families of any such persons who may be residing with them.

If more than thirty such persons are threatened with displacement, the company or authority armed with statutory powers is debarred from exercising them until the Local Government Board have either approved a housing scheme or decided that it is not necessary.

It is also enacted that on failure of local authorities to make schemes for rebuilding on unhealthy areas, confirming authorities may order them to make such schemes; that, if the cost of demolishing too old houses will not be reimbursed by the sale of materials, the deficiency may be recovered from the owners; that cleared land may be utilised for shops and recreation grounds as well as for dwellings; and that the implied statutory condition for fitness in the letting of houses at certain low rents is to take effect notwithstanding any stipulation to the contrary.

**Scotland.**—The Licensing (Scotland) Act (No. 25) is the result of a fusion of two distinct Bills, the one purely amending, and the other purely consolidating—a very commendable mode of procedure in cases where amendment accompanies consolidation, which has already been pursued with advantage in the cases of the Lunacy Act of 1894 (*z*) and the Factory Act of 1901 (*a*). The Act, which contains one hundred and seven sections and twelve schedules, came into operation on January 1, 1904. It incorporates bodily, with some amendments and necessary adaptations to Scots law, the provisions of the English Act of 1902 (*b*) for prevention of drunkenness, formation of "black lists," and registration of clubs; it adds a few provisions of its own, and consolidates the whole Scots law of licensing by the repeal of the Home Drummond Act of 1828, (*c*) the Forbes Mackenzie Act of 1853, (*d*) the Publicans' Certificates (Scotland) Act of 1876 (*e*) (expressly passed to assimilate Scots to English law), and four other Acts. The main distinctions between the law of the two countries—that in Scotland there are no houses with the impregnable position of pre-1869 beerhouses; that inns are licensed distinctively from public-houses, that Brewster sessions are held half-yearly instead of yearly, and that unlicensed drinking is an offence in

(*z*) 57 & 58 Vict. c. 3.

(*b*) See *supra*, p. 96.

(*d*) 16 & 17 Vict. c. 67.

(*a*) See *supra*, p. 80.

(*c*) 9 Geo. IV. c. 58.

(*e*) 39 & 40 Vict. c. 26.



buyer as well as seller—are still preserved ; and a few new distinctions have been added. The most important is that the principle of popular control has been introduced into the Licensing Courts, for the purposes of both original and appellate jurisdiction, by the enactment that—

For each county, or, where a county is divided into licensing districts, for each licensing district there shall be a separate Licensing Court. . . . One-half of the members of such Court shall in every case be elected by the justices of the peace for the county from their own number. . . . For the purpose of hearing appeals and applications for confirmation of new certificates . . . there shall be a . . . Court of Appeal, one-half of which shall in every case be elected by the justices of the peace from their own number, and one-half shall be burgh magistrates or county councillors respectively, as hereinafter provided.

Bylaws of the Licensing Courts may require innkeepers and publicans to close their premises on New Year's Day—a very festive day in Scotland—"and on such other days, not being more than four in any one year, as the Court may deem fit for special reasons," and also to "keep, and from day to day renew, a sufficient supply of drinking water and eatables." These and other newly authorised bylaws will require confirmation by the Secretary for Scotland, and may be formally objected to by persons interested.

The distribution of liquor from vans, which had practically become travelling public-houses, is sharply checked by a series of elaborate provisions. No van containing liquor is to leave licensed premises except for the purpose of delivery to a customer who has expressly ordered it, as evidenced by entries both in a delivery-book and in a day-book. Any such van may be examined by a constable at any time, and delivery to any person except in pursuance of an express and registered order is made unlawful. Thus at length has been dealt with an evil protested against by a Royal Commission more than forty years ago.

The management of the drunkard is somewhat different from that in the English Act. The power to apprehend is given, but it is expressly confined to a constable, the enactment on the subject running thus—

Every person found in a state of intoxication, and incapable of taking care of himself, and not under the care or protection of some suitable person in any street . . . may be taken into custody by any constable, and detained . . . and not later than in the course of the first lawful day after he shall have been so taken into custody, shall be brought before a sheriff or any one justice of the peace or magistrate.

This (with the exception of the introduction of the "suitable person")

is better than the vague English enactment that the offender is to be "dealt with according to law."

If an innkeeper sells liquor on Sunday to a traveller, except for consumption by the traveller himself, he is to be deemed guilty of a breach of his licence.

There are more bogus clubs and fewer working-men's clubs in Scotland than in England, and the Scots Act has handled clubs with greater strictness accordingly. Registration of a club may be objected to, and is not to be obtainable unless the rules contain ten specified provisions. Of these the most important are to the effect that no member of the committee is to have any personal interest in the sale of liquor; that there shall be a defined subscription payable in advance; that a visitor shall not be supplied with liquor unless on the invitation and in the company of a member, who is to enter his own name and the name and address of the visitor in a book kept for the purpose; and that no person under eighteen shall be a member "unless the club is primarily devoted to some athletic purpose," and even in that case is not to be supplied with liquor. The grounds of objection to a grant or renewal of registration—either for paucity of members, or for frequency of drunkenness, for illicit sales, or for habitual admission of outsiders merely to obtain liquor, or other malpractices—are similar to those for which a club may be struck off the register in England, and similarly render the club liable to be struck off the register. The penalty for supplying liquor in an unregistered club is as in England—imprisonment, with or without hard labour, for not more than one month, or a fine up to £50, "or both."

The Burgh Police Act (No. 33, S.) directing the town council of every burgh to cause a register of its streets to be prepared, authorises the planting of trees in streets and the erection of buildings in parks, directs that all vehicles must carry lights, penalises overcrowding and street betting, regulates the manufacture of ice-creams, provides for openings in squares, regulates sky-signs and advertising sites, and recasts the law of licensing theatres, music-halls, and billiard-rooms.

The Town Councils Act (No. 34, S.) (*f*) amends the Scots consolidating Town Councils Act of 1900 (*g*) by admitting sheriff substitutes and sheriff clerks to the franchise, and by providing for the alteration of the date of the annual elections in fishing burghs "where many electors are often absent from home in pursuance of their occupation" at the statutory date (the first Tuesday of November) of such elections.

**Ireland.**—The Bank Holidays Act (No. 1, I.) adds March 17th—St. Patrick's Day—to the list of Bank Holidays in Ireland.

The Irish Land Act (No. 37), (*h*) which came into operation on

(*f*) See *infra*, p. 160.

(*g*) See *supra*, p. 72.

(*h*) See *infra*, p. 124.



November 1, 1903, is designed to complete a series of enactments (of which part of the Gladstone Act of 1870 (*i*) was the earliest and the Ashbourne Act of 1885 (*j*) the most successful) passed to convert agricultural tenants into owners by purchase with money advanced by the State and repayable by easy instalments. The Act is not compulsory, any more than were its predecessors, nor does it, any more than they did, prevent the new owners which it will create from themselves becoming landlords in their turn to a new set of tenants. But it is much more largely inducive, and its provisions may be taken advantage of by a greater number of persons. Not only a tenant, but any son of a tenant on an estate, any tenant or proprietor of neighbouring land not exceeding £5 in rateable value, and any person who has been a tenant within twenty-five years before the passing of the Act has a *locus standi* to apply for an advance of purchase-money with a right to obtain it for judicially rented land, and a probability of obtaining it for land not so rented. On the other hand, landlords of all kinds, including owners for life only (whether their trustees consent or not), are landlords within the meaning of the Act, and potential vendors. Five-sixths of Ireland (so Mr. Wyndham stated in the House of Commons) (*k*) will be subject to the operation of the Act; the outside sum advanceable being one hundred millions to be spread over a period of at least fifteen years. The advances are to be repaid by means of purchase annuities calculated at the rate of £3 5s. for every hundred pounds advanced. For the purpose of aiding the sale of estates, the Land Commission will pay a bonus of 12 per cent. on the purchase-money. If the estate was so encumbered that the vendor was receiving no income from it, this bonus will be distributed among the encumbrancers; if not, the vendor will receive it for his own use—and perhaps even be entitled to the capital, although he be only the tenant for life of a settled estate.

The moneys required to provide this bonus (up to twelve millions) are taken out of an "Irish Land Purchase Aid Fund" raised by the issue of a  $2\frac{3}{4}$  per cent. Government stock, the dividends on which are to be provided by Parliament. Landlords as well as tenants may take advantage of the Act by sales to the Land Commission in cases where re-sales to a three-fourths extent to tenants can be effected. Reservations of sporting rights exclusive of tenants' may be continued to landlords or transferred to tenants by express agreement, but in the absence of such agreement they will become vested in the Land Commission. Mining rights, with certain exceptions, are to be reserved exclusively to the Land Commission, to be disposed of by that body "in manner hereafter to be provided by Parliament."

(*i*) 33 & 34 Vict. c. 46.

(*j*) 48 & 49 Vict. c. 73.

(*k*) See 120 Parliamentary Debates, 181.

Such are the leading features of the elaborate Statute which has been passed, as described in the Royal Prorogation speech, "to expedite the conversion of agricultural tenancies into occupation ownerships throughout Ireland, in a form which offers inducements towards the continued residence of landowners among their countrymen," and to promote a reform which, "by removing ancient causes of social dissension," will, it may be trusted, "conduce to the common benefit of all the King's Irish subjects."

The Light Locomotives (Ireland) Act (No. 2, I.), which expired with the year 1903, provided that the county councils might, on the application of any persons or club, by order containing provisions for the safety of the public, declare that any public road might be used for motor-car races during the whole or part of any specified days not exceeding three in the year.

The General Dealers Act (No. 44, I.) regulates by a licensing system and otherwise, the business of dealers in marine stores and second-hand goods, the Statute being the Irish version of English and Scots enactments long ago found separately necessary, in addition to the protection uniformly accorded to the three countries by the general law of merchant shipping.

**1904** (1) Acts passed—Public General, 36; Local and Personal, 245; Private, 3.

Thirty-six public Acts of Parliament became law in the session which was prorogued on August 15, 1904, two of them applying to Scotland and two applying to Ireland only.

**Army.**—The Army (Annual) Act (No. 5, B.E.) continued the Army Act for one year, and legalised a standing army of 227,000 men, exclusive of those actually serving in India, as against the 235,761 legalised by the Act of 1903, and 420,000 by the Act of the year before. Occasion was also taken to double permanently the amounts (from one to two shillings and from sixpence to a shilling) which may be compulsorily stopped from the pay of a sergeant or private soldier for the maintenance of his wife or legitimate children.

**Anglo - French Convention.**—The Anglo - French Convention Act (No. 33, B.E.) gives the approval of the Parliament of this country to the Convention (subject to the approval of their respective Parliaments) between his Majesty the King and the President of the French Republic for the purpose of putting an end to difficulties which had arisen in connection with rights of fishing on the coast of Newfoundland. The Convention is scheduled to the Act.

(1) This article is mainly a reprint of an article by the late Mr. J. M. Lely in the *Times* of January 4, 1905, entitled "Legislation of the Year 1904."



**Birds.**—The Wild Birds Protection Act (No. 4, U.K.) penalises up to 40s. any person setting upon a tree a trap for any wild bird, and the Wild Birds Protection (St. Kilda) Act (No. 10, S.) repeals that part of the Wild Birds Act of 1880 (*m*) which excludes the Island of St. Kilda from its operation.

**Bishoprics.**—The Bishoprics of Southwark and Birmingham Act (No. 30, E.) provided for the foundation of Bishoprics of Southwark and Birmingham. This was accomplished not by the Act itself, which is a mere superstructure with substituted local schedules, but by the incorporation *mutatis mutandis* of the Bishoprics Act, 1878, (*n*) “including the repealed portions thereof.” These portions comprise a preamble declaring the expediency of increasing “episcopal supervision,” and also long and elaborate provisions deferring the foundation of the bishoprics by his Majesty the King until the Ecclesiastical Commissioners had certified that funds sufficient for their endowment had been raised—provisions which the raising of the funds necessary, and the foundation of the specified sees of Liverpool, Newcastle, Southwell, and Wakefield had rendered useless, and were, therefore, consequentially repealed by the Statute Law Revision Act of 1894. (*o*) This revival, by merely referential incorporation, of a repealed enactment, as in the Finance Act of 1903, (*p*) however expedient from an ecclesiastical and Parliamentary point of view, is, in point of draftsmanship, greatly to be deplored.

**Children.**—The Prevention of Cruelty to Children Act (No. 15, U.K.) is very largely a measure of consolidation, repealing and re-enacting with little variation the whole of the Prevention of Cruelty to Children Act of 1894 (*q*) for the protection of children under sixteen years of age, and also that part of the Employment of Children Act, 1903, (*r*) which raises from seven to ten years the age above which the employment in public entertainments of children under eleven is allowed under magisterial licence. The main amendments effected are these. Societies for the prevention of cruelty to children may, with the consent of the Local Government Board, be subscribed to by boards of guardians, and children in respect of whom a conviction for cruelty has been obtained may be committed to the charge of such societies. The Vexatious Indictments Act, by which various restrictions (such as the requirement that the prosecutor has been bound over to prosecute) are imposed on the preferring indictments for various offences specified in that Act, is applied to misdemeanours under the Act, and the limit of time within which proceedings under

(*m*) 43 & 44 Vict. c. 35.

(*o*) 57 & 58 Vict. c. 56.

(*q*) 57 & 58 Vict. c. 41.

(*n*) 41 & 42 Vict. c. 68.

(*p*) See *supra*, p. 109.

(*r*) See *supra*, p. 101.

the Criminal Law Amendment Act, 1885, (s) may be commenced for criminal abuses of girls between thirteen and sixteen years of age is extended from three months to six. Lastly, with a curious forgetfulness of the general provisions of the Criminal Evidence Act, 1898, (t) the particular section of the Act of 1894 which enacted that persons charged with cruelty to children should be competent but not compellable to give evidence, is re-enacted verbatim.

**Education.**—The Education (Local Authority Default) Act (No. 18, E.) in order to enforce the Education Act, 1902 (u), enacts that—

The Board of Education, without prejudice to their right to take any other proceedings [*e.g.* by *mandamus*], may, if they are satisfied that it is expedient to do so . . . as respects any elementary school, make orders for recognising as managers of that school any persons who were acting as managers thereof, . . . and if it appears to the Board that the managers . . . have . . . incurred any expenses for which provision should have been made by the local education authority, pay to the managers such amount in respect of these expenses as in the opinion of the Board was properly incurred.

Any sums so paid are declared to be a debt due to the Crown from the local education authority, and may be deducted from any sums payable to that authority on account of Parliamentary grants.

**Foreign Plate.**—The Hall-Marking of Foreign Plate Act (No. 6, U.K.) directs that foreign plate when brought to be assayed and stamped, as it has to be by revenue law, must be marked so as to distinguish it as foreign, and that every person bringing it to an assay office, unless it be in charge of a revenue officer, must state in writing whether it was wrought in England, Scotland, or Ireland, or was imported from foreign parts.

**Intoxicating Liquors.**—The Licensing Act (No. 23, E.) which came into operation on January 1, 1905, deals only (except in its general transfer to quarter sessions of the power of a county licensing committee to confirm new licences) with “on-licences” for the sale of any intoxicating liquor (other than wine alone or sweets alone) for consumption on the premises, and is best considered first under the head of “Renewals,” and secondly under that of “New Licences.”

**Renewals.**—The power of the licensing justices of any licensing district to refuse a renewal on the ground that the licences in that district have become too many is transferred from the licensing justices to quarter sessions, but quarter sessions can exercise such power only (1) on a reference from the licensing justices, and (2) on payment of compensation to the dispossessed licensees.

(s) 48 & 49 Vict. c. 69.

(t) See *supra*, p. 17.

(u) See *supra*, p. 93.



The reference is obligatory on the licensing justices, and a consideration of their reports is obligatory on quarter sessions, which may refuse the renewal. The compensation is a sum equal to the difference between the value of the licensed premises as licensed and their value as unlicensed. It is to be paid to "the persons interested," and in default of agreement between them and quarter sessions the amount of it is to be determined by the Commissioners of Inland Revenue subject to appeal to the High Court of Justice. The moneys required for these payments are to come out of a compensation fund to be constituted by quarter sessions annually imposing, "unless they certify to the Secretary of State that it is unnecessary to do so in any year," charges on the licences renewed within their area. The charges will be in proportion to the value of the licensed premises and at rates not exceeding certain *maxima* scheduled to the Act, ranging from £1 on premises under £15 yearly value to £100 on premises of £900 yearly value or more. If the tenure of the holder of the licence is leasehold, he may deduct from his rent a percentage of the charge, lessening with the length of his term, ranging from 88 per cent. in the case of an unexpired term of two years to 1 per cent. in the case of a term of from fifty-five to sixty years, a person whose unexpired term does not exceed one year being entitled to treatment as a freeholder. The charges are to be levied as part of the corresponding Excise licence duties.

The owners of premises licensed before 1869 under special Acts for the sale of beer or wine lose the privilege enjoyed since then of renewal as of right in the absence of ground for refusal affecting the character of the licensee or his house. It has been not unnaturally suggested (*x*) that "compensation in the case of these licences will be higher than that given in the case of other licensed premises in order to recognise their superior Parliamentary title"; but the Act itself draws no such distinction in any express words. One important distinction, however, between these *ante*-1869 licences and other existing "on-licences" is drawn by the Act. The renewal of them cannot be refused without compensation on the grounds of structural deficiency or unsuitability, as can the renewal of other existing "on-licences."

It is further provided that in every case of the refusal of the renewal of an "on-licence" existing at the time of the passing of the Act by licensing justices they are to state in writing the grounds of refusal, and also that renewals may be refused without compensation on the ground of an habitual and persistent refusal "to supply suitable refreshment (other than intoxicating liquor) at a reasonable price," or because "the holder of the licence has failed to fulfil any

(*x*) See Mackenzie, "Licensing Act, 1904," p. 5.

reasonable undertaking given to the justices on the grant or renewal of the licence."

All this new law as to renewals will equally apply to transfers.

*New Licences.*—The jurisdiction of a county licensing committee to confirm new licences is transferred to quarter sessions, and the licensing justices in granting "on-licences" are newly armed with most comprehensive and far-reaching powers. They may attach such conditions as to payment, tenure, and "any other matters" as "they think proper in the interest of the public," it being obligatory in every case to attach such conditions as "having regard to suitable premises and good management" they "think best adapted for securing to the public any monopoly value which is represented" by the increased value arising, in the opinion of the justices, from the licence being attached. New licences may also be granted for terms not exceeding seven years instead of for one year only, as has been the practice for some hundred and fifty years. At the end of the seven years an application for re-grant is to be treated as an application for a new licence and not for a renewal, and during the seven years the licence is to be subject to forfeiture if any condition imposed on the grant is not complied with. The conditions which may be attached to a new licence may be expected to give rise to many questions of difficulty. Their character is described in the most general terms, and the discretion of the justices is controlled only by the vague mention of the interest of the public, and the direction that the amount of any payments imposed shall not exceed the amount required to secure the monopoly value to the public. It seems impossible to put any other legal limit upon the magisterial discretion. The confirming authority, however—*i.e.* in counties quarter sessions, in boroughs not having ten justices a joint county and borough committee, and in other boroughs the whole body of justices—may "with the consent of the justices authorised to grant the licences vary any conditions attached to the licence."

Quarter sessions may divide their area into districts for the purposes of the Act, and may delegate any of their powers under it to a committee appointed in accordance with rules to be approved by the Home Office, and "except in a county borough shall so delegate their power of confirming the grant of a new licence, and of determining any question as to the refusal of a licence under the Act." The Home Office also may make general rules (*y*) for carrying the Act into effect, and particularly providing for provisional renewal of licences included in reports of justices as not to be renewed without consideration, for regulating the management and application of the compensation fund,

(*y*) For the "Licensing Rules, 1904," under these powers, see "Statutory Rules and Orders, 1904," p. 266.



for constituting where requisite standing committees of quarter sessions, and for regulating the procedure of quarter sessions on the consideration of the reports of licensing justices, and on any hearing as to the refusal of renewals or the approval or division of the amount to be paid as compensation.

Such is a brief sketch of the Licensing Act of 1904. The tortuousness of its phraseology and the complexity of its subject render its construction and administration matters of extreme difficulty, especially as it has to be considered in connection with some score of antecedent Statutes, such as the Alehouse Act of 1828, (z) the Beer and Wine Acts of 1830 (a) and 1860, (b) the Wine and Beerhouse Act of 1869, (c) which reimposed the magisterial control taken away by Brougham and Gladstone in those two years, the severe Act of 1872 (d) and its quickly mitigating successor of 1874 (e)—all of which enactments are still to a great extent unrepealed. The consolidation to which the Statute Book has been a stranger since 1828 has now become more than ever desirable, but it would have to be accompanied by more amendments in point of form than is usual with consolidation.

**London.**—The Metropolitan Improvement (Funds) Act (No. 2, E.) authorised the appropriation of certain surplus funds arising from moneys payable in respect of the creation of Battersea Park in 1846, and directed by an Act of 1851 to be accumulated until required for the execution of improvements in the metropolis and its neighbourhood, “towards the opening of the Mall into Charing Cross.” The Act adds that the residue, if any, may be applied by the Commissioners of Works, with the sanction of the Treasury, to such other improvements in the metropolis and its neighbourhood as they may think fit.

The London Electric Lighting Areas Act (No. 13, E.) provides for the adjustment, in accordance with the changes of boundary effected under the London Government Act, 1899, (f) of the areas in which local authorities and companies are authorised to supply electricity.

**Poor Law.**—The Poor Law Authorities (Transfer of Property) Act (No. 20, E.S.) provides for the transfer of property and other matters consequent upon the dissolution of districts and Poor Law unions or the addition of one Poor Law union to another.

The Outdoor Relief (Friendly Societies) Act (No. 32, E.) limits the discretion of guardians of the poor (conferred on them by the Outdoor Relief Friendly Societies Act of 1894), (g) in granting outdoor relief to a member of a friendly society, to consider the amount which such

(z) 9 Geo. IV. c. 61.

(b) 23 & 24 Vict. c. 27.

(d) 35 & 36 Vict. c. 94.

(f) See *supra*, p. 32.

(a) 11 Geo. IV. & 1 Wm. IV. c. 61.

(c) 32 & 33 Vict. c. 27.

(e) 37 & 38 Vict. c. 69.

(g) 57 & 58 Vict. c. 25.

member has received from such society, by the direction that sick pay up to five shillings a week is not to be so considered.

**Public Health.**—The Public Health Act (No. 16, U.K.) extends the powers of the Local Government Boards of England, Scotland, and Ireland under the Public Health Act, 1896, (*h*) to make regulations to prevent danger to public health from infectious diseases from ships, by declaring that such powers, “so far as may be necessary or expedient for the purpose of carrying out any convention with any foreign country,” shall include the authorisation of measures to prevent danger from ships arriving at any port.

**Railways.**—The Railways (Private Sidings) Act (No. 19, U.K.) enacts that the reasonable facilities for receiving, forwarding, or delivering traffic which every railway company is bound to afford shall include facilities for private siding junctions enforceable by order of the Railway Commissioners.

**Revenue.**—The Finance Act (No. 7, U.K.) increased the duty on tea from 6*d.* to 8*d.* on the pound, on cigars from 5*s.* to 5*s.* 6*d.* per pound, on cigarettes from 3*s.* 5*d.* to 4*s.* 5*d.*, and added 3*d.* per pound to the duties on unmanufactured tobacco if stripped. The additional duties of Customs on tobacco, beer, and spirits, and of Excise on beer and spirits which were imposed in 1900 were further continued, and the income tax was raised from 11*d.* to 1*s.* There is also a novel and most important provision that—

The National Debt Commissioners shall, as and when the Treasury request, pay into the Exchequer, out of the account . . . of unclaimed dividends, sums not exceeding in the whole one million pounds, and may for that purpose sell any stock standing to the credit of that account.

**Savings Bank.**—The Savings Bank Act (No. 8, B.E.) expressly directs the appointment, indirectly required by the Trustee Savings Bank Act of 1863, (*i*) of an auditor of every trustee savings bank, and limits the appointment to one year, subject to eligibility for reappointment. Amongst other provisions is one providing that—

The Postmaster-General may enter into an arrangement with any Government savings bank in any British possession or foreign country for the transfer of sums standing to the credit of depositors from such a Government savings bank to the Post Office Savings Bank, or from the Post Office Savings Bank to such a Government savings bank.

This world-wide enactment may be supplemented by Post Office regulations to be made with the consent of the Treasury, which may provide for any matters necessary to give effect to the transfers authorised.

(*h*) 59 & 60 Vict. c. 20.

(*i*) 26 & 27 Vict. c. 87.



**Shops.**—The Shop Hours Act (No. 31, U.K.) defines a shop as including any place where retail trade, including the business of a barber, is carried on, but excludes from its scope fairs, bazaars for charitable purposes, and any shop where the sole business is either (1) Post Office business, or (2) sale of medicines, etc., or (3) retail of intoxicating liquors, or (4) sale of refreshments for consumption on premises, or (5) sale of tobacco “and other smokers’ requisites,” or (6) sale of newspapers, or (7) railway bookstalls or refreshment-room business. “Local authority” means in London, outside the City—in which the Common Council is to be the authority—a metropolitan borough council, and elsewhere the council of an urban district with a population of over 20,000, the county council, or the borough council; and “central authority” means in England a Secretary of State, in Scotland the Secretary for Scotland, and in Ireland the Lord-Lieutenant. Closing orders made by a local and confirmed by the central authority may fix closing hours—at 7 p.m. or later, but not earlier, except on one day of the week at 1 p.m. or later—on the several days at which either throughout the area of the local authority or in some specified part of it “all shops or shops of any specified class are to be closed for serving customers.” The closing order may contain exemptions and conditions, and may authorise emergency sales after the closing hour. Before making an order, the local authority must have been “satisfied,” that there was a *prima facie* case for it, must have given public notice of their intention and opportunity for objections, and must have been “satisfied,” after considering objections, if any, that the occupiers of at least two-thirds of the shops to be affected approve.

**Telegraphs.**—The Telegraph Money Act (No. 3, U.K.) authorises the Treasury to issue such sums up to £3,000,000 as may be required by the Postmaster-General for the purpose of the numerous Telegraph Acts passed between 1863 and 1899 to promote the Government purchase and control of telegraphic or telephonic communication, the money being raisable by borrowing by means of terminable annuities for a term not exceeding twenty years.

The Wireless Telegraphy Act (No. 24, U.K.), (*k*) which extends to the whole of the British Islands, and may by Order in Council be applied to British ships on the high seas, prohibits wireless telegraphy except in accordance with a licence of the Postmaster-General for such period as he may determine, and containing the restrictions subject to which it is granted. The Act does not apply to electrical apparatus for actuating machinery, or for any purpose other than the transmission of messages; and special licences may be granted solely for experimental purposes, and also (due regard being had to the maintenance of effective

(*k*) See *infra*, p. 137.

control) "at reduced terms for the establishment and working of wireless telegraph stations to be used exclusively for the transmission within the United Kingdom of news to public registered newspapers."

**Universities.**—The University of Liverpool Act (No. 11, E.) extends the privileges of the graduates of the University of Liverpool by opening to them all offices open to graduates of the Universities of Oxford, Cambridge, London, and Manchester, and granting to them all privileges and exemptions enjoyed by graduates of those Universities; and the Leeds University Act (No. 12, E.) extends the privileges of Leeds graduates in the same terms, which are taken from the Victoria University Act, 1888, (*l*) by which the privileges of graduates of the Victoria University of Manchester were similarly extended.

**Weights and Measures.**—The Weights and Measures Act (No. 28, U.K.), which came into operation on January 1, 1905, substitutes for the power of the Board of Trade to disapprove regulations of local authorities an initiative power to that Board to make regulations as to verification and stamping weights and measures, obliteration of stamps, application of tests of accuracy, limits of error to be allowed, "and generally for the guidance of local authorities," but adds that these regulations may confer on local authorities power to make special local regulations of their own in suitable cases. There are also many small amendments of the Acts of 1878 (*m*) and 1889, (*n*) as that the existing fines for increasing or diminishing weights are to apply to measures, that inspectors are disabled from receiving an informer's part of a fine, that imprisonment with hard labour may be awarded on conviction of any offence (instead of only on conviction of a second or subsequent offence) committed with intent to defraud, that local authorities, under the Act of 1889 only enabled to provide working standards of measure and weight for their officers, become bound to provide them if the Board of Trade so direct. Moreover, for the vague general prohibition of discount being allowed by an inspector on his scheduled fees for verification and stamping there is substituted the specific and comprehensive enactment that—

No discount, commission, or rebate of any kind shall be given, nor any allowance made, by such inspector, or by the local authority, for the use of tools, premises, machinery, or instruments, or assistance rendered . . . except when verification and stamping take place on the premises of a glass or earthenware manufacturer, in which case such adequate and reasonable allowance as may be agreed upon by the local authority, with the consent of the Board of Trade, may be made.

**Scotland.**—The Secretary for Scotland Act (No. 27, E.S.) enacts that the Secretary of State may, with the concurrence of the Treasury

(*l*) 51 & 52 Vict. c. 45.

(*m*) 41 & 42 Vict. c. 49.

(*n*) 52 & 53 Vict. c. 21.



and the Secretary of State for Scotland, transfer to the Secretary of Scotland all powers under the Reformatory and Industrial Schools Acts which are exercisable in Scotland.

**Ireland.**—The Irish Land Act (No. 34) (*o*) confers on owners of untenanted land, and also—thus cutting a knot of great legal perplexity—on tenants for life as distinguished from their trustees, the benefit of the bonus which the Act of 1903 (*p*) handed over out of the public Exchequer to the sellers of Irish land to or for Irish occupiers.

The Registration of Clubs (Ireland) Act (No. 9, I.) provides for the registration of Irish clubs upon the certificate of county justices or county borough justices that the club in respect of which the certificate is given is to be conducted as a *bonâ fide* club, or in the case of an existing club that it also has been so conducted and is not used mainly for the supply of excisable liquor. If at any time a justice of the peace is satisfied that there is reasonable ground for supposing that any registered club is so managed as to constitute a ground of objection to the renewal of the certificate, he may grant a search warrant. A Court of Summary Jurisdiction may also cancel the certificate of a club on proof of improper management.

**1905** (*q*) Acts passed—Public General, 23; Local and Personal, 213; Private, 8.

Of the twenty-three public Acts of Parliament which received the Royal assent in the session which ended in August, 1905, only three are of sufficient importance for detailed treatment—the Aliens Act, which came into operation on January 1, 1906; the Trade Marks Act, which came into operation on April 1, 1906; and the Unemployed Workmen Act, which is quite the most important Poor Relief Act since 1834, and has been in theoretical operation since its passing on August 11, 1905, though its practical working depended on the important Local Government Board orders and regulations issued on the following September 20th and October 10th to county councils and other bodies, and “to all others” whom those orders and regulations “might concern.”

**Aliens.**—The Aliens Act (No. 13, U.K.), which defines “immigrant” as an “alien steerage passenger” intending to stay in this country, and “immigrant ship” as a ship having on board more than twenty such passengers, “or such number of those passengers as may be for the time being fixed by order of the Secretary of State, either generally or as

(*o*) See *supra*, p. 114.

(*p*) See *supra*, p. 113.

(*q*) This survey is substantially a reprint of an article by the late Mr. J. M. Lely in the *Times* of Christmas Day, 1905.

regards any special ships or ports," enacts that an immigrant shall not be landed from an immigrant ship except at a port where there is an immigrant officer, and not at such port without that officer's leave. This leave is to be withheld in the case of an "undesirable immigrant," the master or owner of the ship having a right of appeal against the refusal of leave from the immigrant officer to an immigration board. An "undesirable immigrant" is one who (1) cannot show that he can decently support himself and his dependants; or (2) is a lunatic or idiot or "owing to any disease or infirmity appears likely to become a charge upon the rates or otherwise a detriment to the public"; or (3) has been sentenced in a foreign country for an extradition crime; or (4) has had an expulsion order made against him. There is no definition of "dependants." Leave to land is not to be refused merely for want of means to an immigrant immigrating solely to avoid prosecution or punishment on religious or political grounds "or persecution involving danger of imprisonment or danger to life or limb on account of religious belief," or to an immigrant who, having taken his ticket here and embarked here for some other country after at least six months' residence here, has been refused admission to that country and returned here direct. Immigration boards will consist of three persons summoned out of a list for each port, and will comprise "fit persons having magisterial, business, or administrative experience."

As to expulsion of undesirable aliens, the Secretary of State may, if he thinks fit, make an expulsion order requiring an alien to leave the United Kingdom within a time fixed and thereafter to remain out of it upon a certificate either of a conviction of serious crime with a recommendation by the Court of Trial that an expulsion order be made either besides or instead of the sentence, or the certificate of a Court of Summary Jurisdiction that the alien has received actual relief within twelve months, "or been found wandering without ostensible means of subsistence or been living under insanitary conditions due to overcrowding." The Act also, repealing and re-enacting with amendments the Registration of Aliens Act, 1836, (*r*) requires masters of ships to furnish particulars of alien passengers, and empowers the Secretary of State to appoint "immigration officers" at such ports of the United Kingdom as he shall think necessary for the time being.

**Coal.**—The Coal Mines (Weighing of Minerals) Act (No. 9, U.K.) empowers the persons employed in a coal mine and paid according to the weight of the mineral gotten by them to appoint a deputy check weigher to act in the absence of the present statutory check weigher for reasonable cause, and increases the facilities to be afforded to a

(*r*) 6 & 7 Wm. IV. c. 11.



check weigher by requiring a shelter from the weather, a desk, and sufficient weight to test the weighing machines.

**Medical Register.**—The Medical Act (1886) Amendment Act (No. 14, B.E.) directs that for the purposes of the Act of 1886(s) (which allows Colonial practitioners to be registered in this country) where any part of a British possession is under both a central and local Legislature, an Order by the King in Council may declare that the part under the local Legislature is to be deemed a separate British possession.

**Merchant Shipping.**—The Shipowners' Negligence (Remedies) Act (No. 10, U.K.) was greatly altered in form during its passage through Parliament. The Act enlarges the remedies of persons injured by a ship in a port or harbour in the United Kingdom through the negligence of a foreign shipowner or any of his crew, by authorising a judge to order the detention of the ship upon its being shown that the owners are probably liable to pay damages. The detention is to continue until the owners have made satisfaction or given security to abide the event of an action. The Act is mainly intended to apply to the cases where workmen (and consequently their employers under the Workmen's Compensation Act) suffer from injuries received in discharging or loading the cargoes of foreign ships.

**Naval Works.**—The Naval Works Act (No. 20, B.E.) directs the Treasury to issue such sums up to £5,835,000 as the Admiralty may require for works at Dover, Gibraltar, Hongkong, Bermuda, and other places mentioned in the Act.

**Provisional Orders.**—The Provisional Order Marriages Act (No. 23, E.) allows a Secretary of State, in the case of marriages which appear to him to be invalid or of doubtful validity, to remove the inability or doubt by provisional order to be confirmed by Parliament after advertisement of the draft order, official consideration of objections, and, if necessary, a local inquiry.

**Railway Fires.**—The Railway Fires Act (No. 11, U.K.) (which, however, does not come into operation until 1908, and even then applies only to claims not exceeding £100) gives compensation, hitherto irrecoverable on the ground that the engines were run with statutory authority, for damage to agricultural land or crops by sparks or cinders from railway engines.

**Revenue.**—The Finance Act (No. 4, U.K.) continues an income tax of 1s. in the pound, and various increased duties of Customs and Excise on tobacco, beer, and spirits, but reduces the tea duty from 8*d.* to 6*d.* in the pound. Exchequer bonds up to £10,000,000 are also authorised, with the novel feature of a redeemability by drawings.

**Trade Marks.**—The Trade Marks Act (No. 15, U.K.) is both a consolidating and amending measure, and greatly improves both the substance and the form of the law of its subject, which it has completely detached from the more general Patents, Designs, and Trade Marks Act of 1883. (t) The short effect of the law before the Act was that the proprietor of a registrable trade mark might by registration of it at the Patent Office acquire the exclusive right to use it upon or in connection with the goods in respect of which it was registered. This right lasted for seven years, but registration might be renewed for seven years more from time to time. The registration had to be in respect of particular goods or classes of goods, and the proprietorship in the mark is assignable. Among the changes effected are these:—The sphere of “registrable trade marks” is much extended, to the benefit of British traders in their foreign trade. The grounds of official refusal to register will have to be stated in writing if the applicant so requires, and there will be an appeal against the refusal to the High Court of Justice or the Board of Trade, at the option of the applicant. Registration will become conclusive after seven years except in case of fraud or impropriety, and unauthorised assumption of the Royal Arms will be no longer penal, but only restrainable by injunction at the suit of any person authorised to use the arms.

**Unemployed Workmen.**—The Unemployed Workmen Act (No. 18, U.K.) has directed the Local Government Board to establish a distress committee of every London borough council, consisting partly of councillors and partly of Poor Law guardians and persons experienced in the relief of distress, and a central body for the whole of London, consisting partly of members of distress committees and London county councillors and partly of persons co-opted as additional members—one member at least, both of distress committee and central body, to be a woman. The distress committee are to make themselves acquainted with the conditions of labour within their area, and, when so required by the central body, to “receive, inquire into, and discriminate between any applications made to them from persons unemployed,” but they are not to entertain an application from any person “unless they are satisfied that he has resided in London for such period, not less than twelve months, as the central body fix as a residential qualification.” The expression “persons unemployed” throws the power of application far beyond the title of the Act, the requirement of a residential qualification only pointing further to wideness, and though Local Government Board regulations may frame, and have framed, “conditions under which applications may be entertained,” there is no express restriction of the

(t) 46 & 47 Vict. c. 57.



Act to manual labour only, or to workmen in the ordinary sense of the term. The relief obtainable is that—

If the distress committee are satisfied that any applicant is honestly desirous of obtaining work, but is temporarily unable to do so from exceptional causes over which he has no control, and consider that his case is capable of more suitable treatment under this Act than under the Poor Law, they may endeavour to find work for the applicant, or, if they think the case is one for treatment by the central body rather than by themselves, refer the case to the central body, but the distress committee shall have no power to provide, or contribute towards the provision of, work for any unemployed person.

The central body is directed to superintend the action and aid the efforts of the distress committee, and empowered to assist an unemployed person by emigration or removal to another area of himself and any of his dependants or by provision of temporary work. There is no definition of "dependants." The expenses are to be defrayed out of a central fund under the management of the central body, to be supplied by voluntary contributions and rates up to one halfpenny in the pound per annum, "or such higher rate, not exceeding one penny, as the Local Government Board approve." Provision of temporary work is not to work disfranchisement. Outside London, urban districts with a population of not less than 50,000 are to have similar distress committees. Local Government Board orders of September 20, 1905, have established such committees both for London and for such urban districts. Regulations may also be made generally for carrying the Act into effect, and particularly for, among many other things, authorising a central body to establish farm colonies, to acquire land by agreement, to accept gifts of money or property, to apportion receipts between a voluntary contribution account and a rate contribution account, and to borrow money, and copious regulations were issued by the Board on October 10, 1905, to the various bodies charged with their execution. These regulations enumerate the conditions—*e.g.* that an applicant has not from any sources sufficient means to maintain himself and his dependants, and is of good character—under which an application may be entertained by a distress committee, provided that applications by persons having dependants, having been regularly employed, and being qualified for such work as is obtainable are to be treated preferentially, and require that any temporary work "shall have for its object a purpose of actual and substantial utility" and be subject to numerous other economical restrictions. The sixth of the twenty-two articles directs a distress committee to keep a record of every case in which they are applied to, and the detailed "Record Paper" which is scheduled to the regulations may be studied with advantage by all

concerned. The Act is temporary only.<sup>(u)</sup> Many orders and circulars of the Local Government Board have been issued under it.

**War Stores Commission.**—The War Stores (Commission) Act (No. 7, B.E.) provided for the more effective conduct, by Mr. Justice Farwell, Sir George Taubman Goldie, Field-Marshal Sir George White, Sir Francis Mowatt, and Mr. Samuel Hope Morley, of their investigation as Royal Commissioners directed to report upon the allegations of General Butler's committee, upon all the circumstances connected with contracts in South Africa after peace, and upon the responsibility of all persons concerned. The Commissioners had express power, analogous to that of previously passed Acts directing special inquiries by Royal Commissioners, to enforce the attendance of witnesses, compel the production of documents, and punish for contempt, a full indemnity being granted to every witness making a full and true disclosure touching all matters in respect of which he is examined.

**Scotland.**—The Churches (Scotland) Act (No. 12, S.) commits to five Royal Commissioners the settlement of the important questions as to property between the Free Church and the United Free Church in Scotland, which will be found fully set out in the judgments of the House of Lords in the case of *General Assembly of the Free Church of Scotland and others v. Lord Overtoun and others*,<sup>(x)</sup> in which the majority of that House held, in August, 1904, reversing Scots decisions, that the union of 1900 between the Free Church and the United Presbyterian Church, under the name of the United Free Church of Scotland, was invalid and did not bind the property of the Free Church. The Commissioners, the quorum being three, and the chairman having a casting vote, are directed to allocate between the two Churches the property in question in such manner as appears to them fair and equitable, having regard to all the circumstances of the case, but subject to the provisions of the Act. It is also enacted that—

The formula of subscription to the Confession of Faith required from ministers and preachers of the Church of Scotland as by law established and from persons appointed to Chairs of Theology in the Scottish Universities and the principal of St. Mary's College, Saint Andrews, respectively, shall be such as may be prescribed by Act of the General Assembly of the said Church with the consent of the majority of the presbyteries thereof. The formula at present in use in any case shall be required until a formula in lieu thereof is so prescribed.

**Ireland.**—The Licensing (Ireland) Act (No. 3, I.) prescribes entire instead of partial Christmas Day closing of premises licensed for the

<sup>(u)</sup> Continued by Expiring Law Continuance Act, 8 Edw. VII. c. 18.

<sup>(x)</sup> (1904) 20 Times Law Reports, 730; reversing the decision in *Bannatyne v. United Free Church of Scotland*, 4 Fraser, 1083.



retail of intoxicating liquors in Ireland, with savings for sales to lodgers, *bonâ fide* travellers, members of registered clubs, and railway or packet-boat passengers.

**1906** (*y*) Public General, 58; Local and Personal, 212; Private, 3.

**Accidents in Mines and Factories** (No. 53, U.K.).—Notices of accidents in mines, quarries, factories, and workshops, with particulars, are to be sent at once to the inspector of the district by an amendment of the Act of 1901. (*z*)

**Agricultural Holdings** (No. 56, U.K.).—This Act, amending the Act of 1900, (*a*) provides for compensation for damage by game, which means deer, pheasants, partridges, grouse, and black game. A tenant, any custom of the country to the contrary notwithstanding, is to have full freedom as to cropping and the disposal of produce. A landlord is to pay compensation for unreasonable disturbance of a tenant by notice to quit.

**Alkali Works** (No. 14, U.K.).—Alkali work in this Act means every place for (1) the manufacture of sulphate of soda or sulphate of potash, or (2) the treatment of copper ores by common salt or other chlorides, whereby any sulphate is formed in which muriatic acid gas—a noxious and offensive gas—is evolved. It covers a long list of works set out in the schedule. Henceforth such works are to be carried on in such a manner as to secure the condensation, to the satisfaction of the chief inspector, of the muriatic acid gas evolved. Works are to be registered and inspectors appointed by the Local Government Board—large powers to enter, examine, and test being given to such inspectors—and an annual report is to be made by the chief inspector to the Local Government Board. Fines for offences are imposed and made recoverable in the county court.

**Army**.—The Army (Annual) Act (No. 2, B.E.), with its instructive constitutional preamble, continues the Army Act for one year more and legalises a standing army of 204,100 men. It further amends the Army Act by authorising detention for two years as a punishment for military offences in lieu of imprisonment—a technical distinction made in order to avoid the stigma of imprisonment.

**Betting in Streets** (No. 43, U.K.).—It is impossible to be sanguine as to any legislative effort to deal with so inveterate a vice as gambling. This is a well-meant attempt to check some of its more demoralising forms. “Any person frequenting or loitering in streets or public places, on behalf either of himself or any other person, for the purpose of book-making, or betting, or wagering, or agreeing to bet or wager, or paying,

(*y*) Contributed by Edward Manson, Esq.

(*z*) See *supra*, p. 83.

(*a*) See *supra*, p. 44.

or receiving, or settling bets," is to be liable to a fine of £10; £50 or imprisonment for a third offence. Betting with a person under sixteen is also punishable with fine or imprisonment. A constable may take the offender into custody without warrant.

"Public place" has a wide interpretation, framed to meet the well-known difficulties to which the expression has given rise.

**Bills of Exchange** (No. 17, U.K.).—A banker receives payment of a crossed cheque for a customer within s. 82 of the Bills of Exchange Act, 1882, (b) notwithstanding that he credits the customer's account with the amount of the cheque before receiving payment of it, thus reversing the interpretation placed upon that section by a judgment of the House of Lords. (c)

**Burials** (No. 44, U.K.).—This Act dispenses with consent to users of land as a burying-ground by owners and occupiers of houses built since the land was so appropriated, thus reversing the section in the Burial Act, 1885, held to have a contrary meaning. (d)

**Census of Production** (No. 49, U.K.).—By this Act a scheduled list of persons, occupiers of factories and workshops, owners and managers of mines and quarries, builders, contractors for railroads, tramways, harbours, docks, etc., and every person who by way of trade or business gives out work to be done elsewhere than on his own premises, is required to make a yearly return in an official form of the nature of the trade or business, particulars of the output, the number of days on which work is carried on, the number of persons employed, and the power used, and a Board of Trade Report based on such returns is to be laid before Parliament. Individual returns are not to be published nor particulars to be disclosed. Advisory committees of persons conversant with the conditions in various trades and industries may be appointed to assist the Board of Trade.

**Compensation to Workmen** (No. 58, U.K.).—The first sub-section of this consolidating Act (e) runs as follows:—

If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act.

The workman forfeits his right if the accident is attributable to serious and wilful misconduct on his part. The scale fixed by the Schedule is limited in case of death to £300: in case of partial or total disablement to £1 a week. An employer may contract himself out of the Act by

(b) 45 & 46 Vict. c. 61.

(c) *Capital and Counties Bank v. Gordon*, [1903] A. C. 240.

(d) *Godden v. Hythe Burial Board*, [1906] 2 Ch. 270.

(e) It includes the Act of 1900 (*supra*, p. 46).



agreeing to a Friendly Society's scheme certified by the registrar as providing a scale of compensation not less favourable to the workman.

An employer is liable for his sub-contractor. The Act applies to masters of ships, seamen, and apprentices to the sea service, but not to persons in the naval or military service of the Crown.

"Workman," with certain exceptions, means "any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, is oral or in writing."

**Crown Lands** (No. 28, U.K.).—The management of Crown lands is dealt with in this Act.

**Customs** (No. 20, U.K.).—By this Act the duty is regulated on methylated spirits. The stamp duty on an award is made uniform—10s.

(No. 18, Isle of Man).—The tea duty in the Isle of Man is reduced: the additional duties on tobacco, spirits, and ale are continued.

**Dogs** (No. 32, U.K.).—In Scotland the owner of a dog which worries sheep has long been liable without proof of the "scienter." This principle is now introduced into England. The owner of a dog is to be liable in damages for injury done to any one by such dog; and it is not necessary to show a previous mischievous propensity in the dog, or the owner's knowledge of such previous propensity, or to show that the injury was attributable to neglect on the part of the owner. "Cattle" is a genus unknown to natural history, and includes, horses, mules, asses, sheep, goats, and swine. The occupier of premises where the delinquent dog is kept is to be presumed to be the owner unless he proves that he is not. A dog that is proved to have injured cattle or chased sheep may be dealt with as "a dangerous dog" under s. 2 of the Dogs Act, 1871. (f) The Board of Agriculture may make orders for dogs in public resorts wearing collars with the name and address inscribed. A dog not complying with such orders may be seized as a stray dog. Stray dogs may be seized by a police officer, and if not claimed within seven days after notice to the owner may be sold or destroyed. Sheep dogs are exempted from licence duty.

**Extradition** (No. 15, U.K.).—Bribery is now to be an extradition crime as between the United Kingdom and the United States.

**Fertilisers and Food Stuffs** (No. 27, U.K.).—Every seller of a soil fertiliser artificially treated in the United Kingdom or imported from abroad is to give the purchaser an invoice of the name of the article and the percentages of nitrogen, soluble phosphates, insoluble phosphates, and potash contained, and such invoice is to operate as a warranty. There is an analogous provision as to food for cattle or

(f) 34 & 35 Vict. c. 56.

poultry, with a further implied warranty that such food is suitable to be used as such.

The Board of Agriculture is to appoint a chief analyst. Agricultural analysts may also be appointed by county councils, and any purchaser of a fertiliser or food stuff is to be entitled to a fee to submit a sample for analysis and to have a certificate of the result. Sellers giving no invoice, or a false one, or using a deleterious ingredient, are to be liable for a first offence to a fine of £20 and for any subsequent offence to a fine of £50.

**Ground Game** (No. 21, U.K.).—An occupier may now kill ground game between September 1st and December 10th otherwise than by the use of firearms.

**Intoxicating Liquors** (No. 42, E.).—Justices acting for a borough under the Licensing Acts may act by a majority.

**Justice of the Peace** (No. 16, E.S.).—This Act abolishes the property qualification for a justice of the peace; also the residential qualification. It is enough if the person to be appointed resides within seven miles of the county. Solicitors are made eligible for appointment, but are not to practise before the justices of the same county.

**Local Government Board** (No. 33, E.).—Certain powers of the Treasury as regards local authorities are transferred to the Local Government Board by this Act.

**Marine Insurance** (No. 41, U.K.).—This is an admirably drafted Act—the work of Sir M. D. Chalmers—codifying the law of marine insurance within the compass of 94 sections. Ss. 1–3 deal with the Contract of Marine Insurance; ss. 4–15 with Insurable Interest; s. 16 with Insurable Value; ss. 17–21 with Disclosure and Representations; ss. 22–31 with the Policy; s. 32 with Double Insurance; ss. 33–41 with Warranties; ss. 42–49 with the Voyage; ss. 50–51 with Assessment of Policy; ss. 52–54 with the Premium; ss. 55–63 with Loss and Abandonment; ss. 64–66 with Partial Losses; ss. 67–78 with the Measure of Indemnity; ss. 79–81 with the Rights of Insurance Payment; ss. 83–84 with Return of Premium; s. 85 with Mutual Insurance. Ss. 86–94 are Supplemental. The Schedule gives a Form of Policy with Rules for Construction.

**Marriage, Deceased Wife's Sister** (No. 30, B.E.).—This Act puts an end to the anomaly by which a person who had contracted a lawful marriage with his deceased wife's sister in a British possession found his children in the United Kingdom incapacitated from succeeding to land, dignities, or honours. It has now become superfluous since the legislation of marriage with a deceased wife's sister by the Act of 1907. (g).



**Marriage with Foreigners** (No. 40, B.E.).—The object of this Act is to enable a British subject desirous of marrying a foreigner in a foreign country to comply with the foreign law by obtaining from the registrar, on due application, a certificate that no legal impediment to the marriage has been shown. Similar certificates, by arrangement between his Majesty and foreign countries, are to be issued in the case of a foreigner desirous of intermarrying in this country with a British subject.

**Meals for Children** (No. 57, E.).—A local education committee, or "School Canteen Committee," is empowered to provide meals for children in attendance at any public elementary school in their area. The parent is to be charged for every meal an amount to be fixed by the committee, and is liable to pay such amount as a civil debt unless the committee are satisfied that he is unable to do so "by reason of circumstances other than his own default." The cost incurred may, with the sanction of the Board of Education, be defrayed out of the rates. Non-payment by a parent is to involve disfranchisement.

**Merchant Shipping** (No. 48, U.K.).—This Act (*h*) (Part I.) extends the loadline and other safety provisions of the Merchant Shipping Act, 1894, (*i*) to all foreign ships while they are within any port in the United Kingdom. Part II. lays down regulations for passenger and emigrant ships. Part III. deals with seamen's food. Part IV. with the relief and registration of distressed seamen. Part V. is miscellaneous, and deals, *inter alia*, with the registration of ships' names, mortgages on ships sold to foreigners, crew space, appeals in case of shipping casualties, mates' certificates, desertion, etc.

**Municipal Corporations** (No. 12, U.K.).—The immunity from disqualification is extended to interests by reason of membership in any society registered under the Industrial and Provident Societies Acts.

**Musical Copyright** (No. 36, U.K.).—The chief object of this Act is to amend a defect revealed in the Act of 1902. (*k*) Any person in possession of any pirated copies of a musical work, unless he can prove that he acted innocently, is to be liable to a fine of £5, and on a second conviction to two months' imprisonment. Any constable may take into custody, without warrant, any person selling in the street pirated copies of any such musical work as may be specified in any general written authority addressed to the chief officer of police, and signed by the apparent owner of the copyright, requesting the arrest at the risk of such owner.

**Open Spaces** (No. 26, E.I.).—The law is consolidated in great detail. Consecrated burial grounds are not to be used for playgrounds except with the bishop's licence. County councils may purchase and lay out

(*h*) See *infra*, p. 153.

(*i*) 57 & 58 Vict. c. 60.

(*k*) See *supra*, p. 98.

land as public walks or pleasure grounds or contribute to their maintenance.

**Police.**—This Act (No. 6, E.) arms the Royal Commissioners for inquiring into the duties of the Metropolitan Police in cases of drunkenness, disorder, and solicitation, with all the powers vested in the High Court for compelling the attendance of witnesses, the production of documents, and the punishing of contempt. Witnesses are not to be exempt from answering questions which may criminate, but if making full disclosure are to be entitled to a certificate of indemnity.

Another Act (No. 7, U.K.) deals with the superannuation of constables and pensions.

**Post Office** (No. 4, U.K.).—A small but useful reform. Money orders may under this Act be obtained by arrangement for transmission of small sums to foreign States and British Protectorates.

(No. 22, U.K.).—This is a boon to the blind. It empowers the Treasury to cheapen the rate of transmission for books and papers impressed for the use of the blind.

**Prevention of Corruption** (No. 34, U.K.).—The giving and taking of secret commissions have long been a blot on our commercial system. The present Act deals very severely with such practices and will no doubt help to educate the public conscience. Paraphrasing in such a case is dangerous. The *ipsissima verba* of the material sections are therefore given :—

If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement, or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business ; or

If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business ; or

If any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal,

the agent or person so offending is to be guilty of a misdemeanour and liable on indictment to imprisonment for two years, with or without hard labour, or to a fine not exceeding £500, or to both, and on



summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine of £50, or both.

The widest interpretation is given to the terms of the Act: "consideration" includes valuable consideration of any kind; "agent," any person employed by or acting for another; and "principal" includes an employer.

To prevent an abuse of the Act, a prosecution under it is not to be instituted without the consent of the Attorney or Solicitor-General. The Act extends, with qualifications, to Scotland.

**Public Trustee** (No. 55, E.).—This Act supplies a long-felt want. It constitutes a public trustee to—

- (a) act in the administration of estates of small value;
- (b) act as custodian trustee;
- (c) act as an ordinary trustee;
- (d) be appointed to be a judicial trustee;
- (e) be appointed to be the administrator of the property of a convict under the Forfeiture Act, 1870. (l)

In each of these cases the powers and duties of the public trustee are defined and regulated by the Act.

The Consolidated Fund is to be liable to make good all sums required to discharge any liability which the public trustee, if he were a private trustee, would be personally liable to discharge. The fees to be charged by the public trustee are to be fixed by the Treasury with the sanction of the Lord Chancellor. The public trustee may employ solicitors, bankers, accountants, brokers, and such other persons as he may consider necessary, and in doing so may take into consideration—subject to the interests of the trust—the wishes of the creator of the trust, the other trustees (if any) and the beneficiaries. The accounts of any trust are, on application by any trustee or beneficiary, to be audited by such solicitor or public accountant, as may be agreed by the applicant and the trustees, in default of agreement by the public trustee or some person appointed by him.

**Reserve Force** (No. 11, B.E.).—The regulations of the Reserve Forces are extended to men who may be authorised by the Secretary of State to live in British Dominions outside the United Kingdom. It also enables the Force to be recruited from the same area.

**Revenue** (No. 8, U.K.).—This is the annual Finance Act. The duty on tea is reduced to 5*d.* a pound: also on stripped tobacco. The income tax is continued at 1*s.* in the pound.

**Seamen's and Soldiers' Certificates** (No. 5, B.E.).—Forgery of service or discharge certificates is made summarily punishable with imprisonment,

with or without hard labour, and a penalty is imposed on persons giving or using false statements for enlistment.

**Solicitors** (No. 24, U.K.).—The registrars of solicitors—so the Court of Appeal decided in *Rex v. A Solicitor* (*m*)—had no power to refuse to renew the certificate of an undischarged bankrupt. This Act removes the anomaly and gives the necessary power. It also entitles the registrar of solicitors to inspect the file of proceedings in bankruptcy without fee.

**Trade Unions** (No. 47, U.K.).—The chief object of this Act is to override the principle laid down by the House of Lords in *Taff Vale Railway Co. v. Amalgamated Society of Railway Servants*, (*n*) that a registered trade union may be sued in its registered name so as to be liable in tort for the acts of its officials. It amends the law of conspiracy, sanctions peaceful picketing, abolishes the liability for interfering with another person's business, and ends by providing (s. 34 (1)) that "an action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any Court."

**Wireless Telegraph** (No. 13, U.K.).—This continues the Wireless Telegraphy Act, 1904. (*o*)

**Scotland.—Education—Crippled Children** (No. 10, S.).—School boards in Scotland may make special provision for the education, medical inspection, and conveyance to and from school of epileptic or crippled or defective children between five and sixteen.

The machinery for inquiring into fatal accidents in Scotland is amended (No. 35, S.) by providing for a verdict being returned, and provision is made for public inquiries into cases of sudden and suspicious deaths.

**Ireland.**—The law is amended by this Act (No. 23, I.) with reference to promissory notes for loans by charitable societies in Ireland.

Of two other Irish statutes, one (No. 37, I.) deals with the application of the Ireland Development Grant, and the other (No. 39, I.) regulates the hours for closing licensed premises in Ireland, with the usual exemption in favour of *bonâ fide* travellers.

The Seed Potatoes Supply Act (No. 3, I.) validates the supply of seed potatoes to occupiers of land in Ireland and provides for repayment of loans made for such purpose.

The Town Tenants Act (No. 54, I.) provides compensation for

(*m*) [1902] 1 K. B. 128; 71 L. J. K. B. 36.

(*n*) [1901] A. C. 426.

(*o*) See *supra*, p. 122.



improvements to the tenants of houses, shops, and other buildings in Ireland on quitting possession. No contracting out is allowed.

**1907** (*p*) Acts passed—Public General, 56; Local and Personal, 176; Private, 7.

Out of some two hundred and thirty Bills introduced into the House of Commons, or brought down to it from the House of Lords, only fifty-six passed into law, a decrease by two on the number for the preceding year.

**Advertisements Regulation** (No. 27, U.K.).—S. 2 empowers local authorities, as defined by the Act (*viz.* borough councils, certain urban district councils, and county councils: s. 7), to make bylaws (1) for regulating hoardings and similar structures used for the purpose of advertising when they exceed twelve feet in height, and (2) “for regulating, restricting, or preventing the exhibition of advertisements in such places and in such manner, or by such means, as to affect injuriously the amenities of a public park or pleasure promenade, or to disfigure the natural beauty of a landscape”; there is to be a limited saving in bylaws under the Act for hoardings, etc., in use at the time when the bylaws are made.

Bylaws under the Act require the confirmation, in England, of the Home Secretary, and in Scotland and Ireland of a corresponding authority (s. 3); and the powers under the Act are cumulative and not in substitution for existing powers under any local or general Act.

**Army and Military Forces.**—The Army (Annual) Act (No. 2, B.E.), after the usual preamble (taken from the old Mutiny Acts) which fixes the number of the standing Army at 190,000, continues the Army Act in force for one year more. Hitherto the renewal of the Army Act has taken effect in all places outside Europe, other than the West Indies and America, as from December 31st in every year, but s. 2 of this Act, taking into account modern rapidity of communication, makes the Army Act expire in every place outside the British Islands on July 31st, and thus in future years the date (*q*) on which amendments of the Army Act take effect will be accelerated as regards these places. The Act makes a considerable number of other amendments in the law relating to the Army, of which the following may be noticed:—

The scale of charges payable for officers and men when billeted is revised, the soldier when billeted is given a right to supper, and may have mineral water instead of beer (ss. 3 and 8, and First and Second Schedules). In every case where the commanding officer has power to deal with a case summarily the accused will have the right to demand

(*p*) Contributed by W. M. Graham-Harrison, Esq., and Hugh Godley, Esq.

(*q*) See the Army (Annual) Act, 1904, s. 14, *supra*, p. 115.

that the evidence against him shall be taken on oath, which previously he had only the right to do if the offence was one for which the commanding officer could award more than seven days' imprisonment (s. 5). A number of detailed amendments are made (in the light of experience gained in the South African War) in the enactments relating to punishments in active service, and in particular power is given to inflict "field punishment" (which replaces the old term "summary punishment"), for any offence whatsoever instead of only for a limited number of offences, and to inflict fines not exceeding three months' pay.

Territorial and Reserve Forces (No. 9, U.K.).—The object of this Act, which is divided into four parts, is threefold.

Part I. provides for the establishment of County Associations, whose main function is the organisation and administration within the county of the Territorial Force to be raised under the Act. The Associations are to be constituted in accordance with schemes to be made by the Army Council, and they will "have exercise and discharge such powers and duties connected with the organisation and administration of his Majesty's Military forces" as may be assigned or transferred to them by order of his Majesty or by regulations under the Act. S. 2 (2) specifies particular matters in respect of which County Associations may be given powers or duties, and all these matters, with two exceptions only, relate solely to the Territorial Force.

Part II. of the Act authorises the raising of a force to be called the Territorial Force, consisting of such number of men as may be provided by Parliament, and for the government, training, embodiment, etc., of the new force. As respects these matters, the provisions of the Act follow closely the lines of the Militia Act, 1882, (r) but the conditions of training are considerably less stringent than those formerly applicable to the Militia; the terms of engagement, however, in the Territorial Force are much more akin to the Militia terms than to the old Volunteer terms. The Force is to be raised entirely by voluntary enlistment, and the Ballot Acts do not apply to it.

As regards embodiment of the Force, the Act enables all necessary directions to be given for the purpose as soon as a Proclamation has been issued calling out the Reserve, and a separate Proclamation is not necessary, as it was in the case of the Militia; and, further, as soon as the First Class of the Reserve has been called out under any such Proclamation the Territorial Force *must* be embodied within one month, unless Parliament presents an address to the contrary.

S. 29 provides for the transfer to the Territorial Force of existing units of Yeomanry and Volunteers raised in any county for which



a County Association is constituted. (s) The Bill as originally introduced provided also for the transfer of the Militia to the Territorial Force, but under the Act as passed the Militia is dealt with under Part III. It may be observed that the Act does not repeal the old Militia, Yeomanry, and Volunteer Acts.

Part III. of the Act provides for the formation of a Special Reserve, consisting of men who have not served in the Regular Forces; (t) this was impossible under the old law, (u) which only provided for the enlistment in the Reserve of men who have served in the Regular Army. Ss. 31 and 32 contain provisions as to extension of service and liability to be called out. S. 34 deals with existing Militia battalions by giving power to transfer them by Order in Council to the Special Reserve. (x) S. 36 enacts that acceptance of a commission in the Reserve of Officers is not to vacate a seat in the House of Commons.

**Assay of Imported Watch-Cases (Existing Stocks Exemption)** (No. 8, U.K.).—All watch-cases imported into the United Kingdom before June 1, 1907, are by this Act exempted from assay and from the provisions of the Customs Act, 1842, (y) and the Revenue Act, 1883. (z)

It appears to have been assumed for many years, both by the Customs authorities and the Goldsmiths' Company, that watch-cases were not "plate" within the meaning of the above-mentioned Acts. This view, however, was rejected by the Court of Appeal in *Goldsmiths' Company v. Wyatt*, (a), and the Act is apparently intended to protect holders of existing stocks of unassayed foreign watch-cases, who had some justification for their ignorance of the law.

**Butter and Margarine** (No. 21, U.K.).—This Act is an extension of the Sale of Food and Drugs Acts, and may be cited with those Acts, and deals principally with the conditions of the manufacture, sale, etc., of butter, margarine, and "milk-blended" butter. (b)

The chief provisions of the Act are:—

(1) The enactments which at present necessitate the registration of margarine factories are applied to premises on which any butter is blended, reworked, or subjected to treatment, or on which milk-blended butter is manufactured or sold wholesale.

(s) The transfer was effected by Orders in Council of March 19 and April 9, 1903.

(t) The Army (Annual) Act, 1908, 8 Edw. VII. c. 2, s. 4, allows discharged Regulars to be enlisted in the Special Reserve.

(u) Reserve Forces Act, 1882, 45 & 46 Vict. c. 48, s. 3.

(x) The transfer was effected by Order in Council of April 9, 1908.

(y) 5 & 6 Vict. c. 47.

(z) 46 & 47 Vict. c. 55.

(a) [1907] 1 K. B. 95.

(b) "Margarine" is defined as "any article of food, whether mixed with butter or not, which resembles butter and is not milk-blended butter," and this definition is substituted for the old definition in the Margarine Act (50 & 51 Vict. c. 29, s. 3).

"Milk-blended butter" is described in s. 1 as any mixture produced by mixing or blending butter with milk or cream other than condensed milk or cream.

(2) Various powers are given to officers of the Board of Agriculture, the Local Government Board, and local authorities to enter and inspect premises registered under the Acts, or suspected premises.

(3) A penalty is imposed in cases where any adulterant is found in a butter factory, and the limit of moisture in butter, margarine, and milk-blended butter, is regulated.

(4) The provisions of s. 1 of the Act of 1899, (c) prohibiting the importation of certain adulterated substances, etc., are applied to butter, margarine, and milk-blended butter containing more than the prescribed limit of moisture or preservatives, and to milk-blended butter not conspicuously marked with its approved name.

(5) Power is given to make regulations with regard to the use of milk-solids in butter, and the use of preservatives in butter, margarine, and milk-blended butter, and a penalty imposed on breach of the regulations.

(6) Margarine must not be described on labels, advertisements, etc., except either as "margarine" or as "margarine" coupled with some fancy name which has been approved by the Board of Agriculture, and which is not "suggestive of butter."

(7) Dealing in milk-blended butter is subjected generally to the same conditions and restrictions as those to which margarine is subject, and is to be described on labels, advertisements, etc., by a name approved by the Board of Agriculture, and the name must not "refer to or be suggestive of butter or anything connected with the dairy interests."

**Colonies.**—*British North America Act* (No. 11, B.E.).—This Act deals with the annual grants payable by the Dominion Government of Canada to the several Provinces of the Dominion for their local purposes and the support of their Government and Legislatures. The amounts of these payments to the various Provinces were originally fixed, as respects the original Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick, by s. 118 of the *British North America Act, 1867*; (d) as respects British Columbia and Prince Edward's Isle, by Orders in Council of 1871 and 1873 respectively, made under s. 146 of that Act; and as respects Manitoba, Alberta, and Saskatchewan, by Acts of the Parliament of Canada. Imperial legislation being necessary to alter the existing scales of payments, the Dominion Parliament presented an address to his Majesty (which is scheduled to the Act) asking for the necessary legislation, and specifying the new scales of payment, which are to be "a final and unalterable settlement."

The new scales of payment, and certain subsidiary provisions (which are rather complicated), are set out at length in s. 1 of the Act, and are not enacted merely by reference to the terms of the Scheduled Address. It

(c) See *supra*, p. 30.

(d) 30 & 31 Vict. c. 3.



is conceivable that questions may arise as to how far regard may be had to the Schedule for the purpose of construing the enactment contained in s. 1.

*Australian States Constitution* (No. 7, B.E.).—This Act simplifies and makes uniform the provisions relating to the reservation of Bills passed by the Legislatures of New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania. It also removes doubts (see s. 2) as to the validity of any Australian Acts which ought to have been, but which may not have been, reserved in the past.

The Bills passed by the Legislature of any Australian State which will require to be reserved hereafter are Bills which either (1) alter the constitution of the Legislature of the State; or (2) affect the Governor's salary; or (3) are required to be reserved by any Act in force in the State or by the Bill itself.

*Companies* (No. 50, U.K.).—The Provisions of this Act are for the most part based on the recommendation of the Departmental Committee appointed in 1905, which reported in 1906. (e)

The Act, which consists of fifty-two sections and four schedules, deals with a large number of matters of detail of which it is difficult to give any intelligible account within reasonable limits of space, but the main provisions are as follows:—

S. 1 requires every company which does not issue a prospectus "on or with reference to its formation" to file a statement in lieu of prospectus in the form in Schedule I.; this form covers all the facts which are required to be disclosed in a prospectus, where one is issued.

S. 9 gives companies under the Companies Act the power usually granted to statutory companies of paying interest not exceeding 4 per cent. out of capital during construction, subject to the sanction of the Board of Trade.

S. 10 (which does not apply to companies in Scotland) extends the provisions of the Companies Act, 1900, (f) by making it necessary to register *all* mortgages and charges on property of the company, including those on land (wherever situate) and book debts.

S. 14 removes doubts as to the validity of perpetual debentures or debenture stock. S. 15 restores what was believed to be the law till the decision in *In Re Tasker and Sons, Ltd.*, (g) by enabling companies to keep alive for the purpose of reissue debentures which have been redeemed. S. 16 enables a contract to take debentures to be enforced by specific performance, thus getting rid of the decision in *South African Territories, Ltd. v. Wallington*. (h)

(e) Parliamentary Paper Cd. 3052, and Appendix Cd. 3053.

(f) See *supra*, p. 56.

(g) [1905] 2 Ch. 587.

(h) [1898] A.C. 309.

S. 21 requires companies to file annually a statement in the form of a balance-sheet with a summary of capital, liabilities, and assets, but the balance-sheet need not include a statement of profit and loss.

S. 24 provides a penalty for failure to hold the annual general meeting, and empowers the Court to summon a meeting in case of default.

S. 27 finally abolishes the view that a voluntary winding-up is to be regarded as a purely domestic affair of the company's; it requires the liquidator in a voluntary winding-up forthwith to summon a meeting of creditors which will decide whether they want another or an additional liquidator, and enables them to apply to the Court for the purpose.

S. 32 empowers the Court to grant relief on terms to directors who have acted reasonably and honestly.

S. 35 requires a company incorporated outside the United Kingdom which establishes a place of business within it to file with the registrar of companies, a certified copy of the charter, etc., of the company, a list of its directors, and the names and addresses of some one or more persons resident in the United Kingdom authorised to accept process on behalf of the company.

The company must also file an annual statement of affairs, such as is required from a company incorporated in this country under s. 21 of the Act, and if it uses the word "Limited" as part of its name it must state the country in which it is incorporated in prospectuses, etc., and at its place of business.

S. 37 contains the important definition of "private company." Private companies are exempted from compliance with (*inter alia*) the provisions of ss. 1 and 21 of the Act. The text of the section is as follows :—

(1) For the purposes of this Act the expression 'private company' means a company which by its articles—

- (a) restricts the right to transfer its shares; and
- (b) limits the number of its members (exclusive of persons who are in the employment of the company) to fifty; and
- (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) A private company may, subject to anything contained in the memorandum or articles, by passing a special resolution and by filing with the registrar such a statement in lieu of prospectus as the company, if a public company, would . . . have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the company, if a public company, would, under the provisions of s. 6 of the Companies Act, 1900, have had to file before commencing business, turn itself into a public company.

(3) Where two or more persons hold one or more shares in a company



jointly they shall, for the purposes of this section, be treated as a single member.

(4) Wherever in the Companies Acts a minimum of seven members is required only two members shall be required in the case of a private company.

**Criminal Law.**—(i.) *Criminal Appeal* (No. 23, E.).—S. 1 of the Act provides for the constitution of a new Court, to be a superior Court of record and to be called the Court of Criminal Appeal; the Court is to consist of the Lord Chief Justice of England and eight judges of the King's Bench Division chosen by him with the consent of the Lord Chancellor. The Court (of which the sittings will normally be held in London, and which is to sit in vacation if necessary) is properly constituted for the purpose of any hearing if it consists of not less than three and of an uneven number of judges. The decision of the Court is to be by a majority, and there is to be only one judgment pronounced, unless the Court decide that it would be convenient to have separate judgments on some point of law. The decision of the Court is final unless the Attorney-General certifies that it involves a point of law of exceptional public importance, and that there ought to be a further appeal; there may then be an appeal to the House of Lords.

S. 3 specifies the circumstances in which an appeal may be brought, viz. against conviction, on a pure question of law without any leave, and on a question of fact or of mixed law and fact with the leave of the Court of Criminal Appeal, or of the judge who tried the case, and against sentence with the leave of the Court of Criminal Appeal.

Ss. 4 and 5 deal with the determination of appeals and the powers of the Court in certain special cases. The Court must (subject to the proviso in sub-s. (1) of s. 4) allow the appeal if they think the verdict of the jury was unreasonable or against the weight of evidence, or that there was a mistake of law, or "that on any ground there was a miscarriage of justice"; to this, however, there is the above-mentioned proviso giving the Court power to dismiss an appeal, even where they think the appellant succeeds on his point, "if they consider that no substantial miscarriage of justice has actually occurred." On an appeal against sentence, the Court may pass a more as well as a less severe sentence.

S. 6 contains provisions suspending to a certain extent the reversion on conviction, of property, and the operation of restitution orders, and gives the Court power to annul or vary restitution orders.

Ss. 7-18 contain detailed provisions as to the procedure on an appeal, of which the following may be noted:—The Court has full powers as to taking fresh evidence, referring matters of inquiry to special commissioners, and appointing assessors to sit with the Court

(s. 9); the Court may assign legal assistance to an appellant, and the appellant has an absolute right to be present at the hearing, unless a question of law only is involved (ss. 10 and 11); shorthand notes are to be taken at every trial from conviction at which there may be an appeal (s. 16), and the cost of the notes, and a transcript if there is one, is paid by the central Government; rules of procedure are to be made by the judges of the Court with the advice of a special committee of experts in criminal procedure (s. 18).

S. 19 saves the Royal prerogative of mercy, but also enables the Home Secretary to refer any case in which there is a petition from a condemned person, or any particular point arising in the case, to the Court of Criminal Appeal.

The Act does not repeal the Crown Cases Act, 1848, (*i*) and it therefore remains possible for a judge to state a case under that Act, but if a case is so stated it will be considered by the Court of Criminal Appeal, s. 20 (4), and not by the old Court of Crown Cases Reserved.

(ii.) *Probation of Offenders* (No. 17, U.K.).—The principal reform effected by this Act is to authorise the adoption of a practice already in use in many States of America, of releasing on recognisance certain classes of offenders and for the recognisance containing a condition that during a specified time the offender will submit to the supervision of an officer appointed by the Court for the purpose.

Somewhat analogous powers could already at the time the Act was passed be exercised in the case of habitual drunkards and youthful offenders under the Inebriates Act, 1898, (*k*) and the Youthful Offenders Act, 1901, (*l*) respectively.

The Act provides for the appointment of "probation officers" whose duty it is to see that the offender conforms with the conditions upon which he was released and to report to the Court, and offenders who fail to conform with these conditions may be brought before the Court, and, without further trial, sentenced for their original offence.

**Destructive Insects and Pests** (No. 4, U.K.).—This Act extends the powers possessed by the Board of Agriculture under the Destructive Insects Act, 1877, (*m*) for preventing the spreading of the Colorado beetle, to any insect, fungus, or other pest destructive to agricultural or horticultural crops or to trees and bushes. The result is that the Board have power to make orders prohibiting the importation of infected plants and substances, and for the destruction of diseased crops, and to impose penalties on disobedience to their orders. They may also authorise the payment of compensation by local authorities in certain

(i) 11 & 12 Vict. c. 78.

(k) 61 & 62 Vict. c. 60, s. 6. See *supra*, p. 19.

(l) 1 Edw. 7, c. 20. See *supra*, p. 78.

(m) 40 & 41 Vict. c. 68.



cases to the owners of the crops ordered to be destroyed. The Act was specially designed to stop the spread of gooseberry mildew.

**Education (Administrative Provisions)** (No. 43, E.). (*n*)—As the title of the Act implies, it is concerned with small amendments of detail designed to ease the working of the educational machinery of England; but perhaps the following points are of sufficient importance to be noticed:—

S. 1 gives local authorities additional powers in connection with the acquisition and appropriation of land, especially for the purposes of secondary education.

Ss. 3-9 deal with financial matters, and (*inter alia*) extend the period allowed for repayment of borrowed money, allow county councils to contribute towards any capital expenses incurred by non-county boroughs or urban districts for the purposes of secondary education, and allow the Public Works Loan Commissioners to lend money to local education authorities for those purposes.

S. 13 contains perhaps the provisions of most public interest in the Act. It empowers local education authorities to provide vacation schools, play-centres, etc., and compels them to provide for the medical inspection of school children, with a pious aspiration (in the form of proviso) that voluntary agencies may assist in the work.

**Evidence (Colonial Statutes)** (No. 16, U.K.).—Apart from Statute, colonial law could not formerly be proved by codes, Statutes, text-books, etc. A skilled witness had in all cases to be called, who could, however, refresh his memory from such documents. (*nn*)

The effect of s. 6 of the Colonial Laws Validity Act, 1865, (*o*) seems to be that, in the case of colonial Statutes, a copy certified by the proper officer to be a true copy may be received in evidence, but theoretically, at all events, it was still necessary to call a witness to produce the certified copy. Under the new Act Government printers' copies of colonial Statutes are made evidence. The Act extends to Statutes, and to orders, regulations, etc., having statutory force, of all British possessions, and may by Order in Council be made to apply to the Statutes of protectorates, including Cyprus. Forgery of such documents is made an offence punishable by one year's hard labour.

**Finance.**—(*i*.) *Consolidated Fund* (No. 1) (No. 1, U.K.) and *Appropriation* (No. 20, U.K.). These Acts together authorise the issue out of the Consolidated Fund of sums amounting in all to £110,750,129, and give the Treasury power to borrow to that amount temporarily by means of Treasury bills, and the Appropriation Act appropriates the sums so granted to the specified services and purposes.

The wording of ss. 4 and 5 of the Appropriation Act has been altered

(*n*) See *supra*, p. 29.

(*nn*) See the Sussex Peerage Case (1844), 11 Cl. & F. 114.

(*o*) 28 & 29 Vict. c. 63.

from that used in previous Appropriation Acts in order to give the Treasury statutory authority for their practice of allowing excess receipts on any Army or Navy vote to be applied towards the deficits on other votes in the same departments.

(ii.) *Finance (No. 13, U.K.)*.—This is the annual Budget Act, which makes “provision for the financial arrangements of the year.” The Act is divided into seven parts, of which Part I. deals with Customs and Excise, Part II. with Stamps, Part III. with Death Duties, Part IV. with the Local Taxation Account, Part V. with Income tax, and Part VI. with the National Debt. The following account deals only with the more important provisions of the Act.

Part I.: S. 1 continues the Customs duty on tea as from May 14, 1907, to July 1, 1908, at the previous rate.

Ss. 2 and 3 make permanent the additional Customs duties on tobacco, beer, and spirits, and the additional Excise duties on beer and spirits, originally imposed as annual duties by the Finance Act of 1900. Between 1900 and 1907 these duties were continued from year to year by each successive Finance Act.

Part II.: S. 7 removes a difficulty in connection with the stamping of hire-purchase agreements, and makes them bear the ordinary 6*d.* agreement stamp, or, if made by deed, the 10*s.* stamp. Previously great difficulty existed in determining how hire-purchase agreements were to be stamped; one such agreement might be so framed as to be exempt from stamp duty as being an agreement “for or relating to the sale of goods,” another might be liable to be stamped as an agreement, another as a bond.

S. 8. Sub-s. (1) of this section, by a declaratory enactment, removes the doubt as to whether policies by way of advertisement in newspapers against loss of property were included within the term “policy of insurance for any payment agreed to be made by way of indemnity against loss, etc., of property,” as used in the Stamp Act, 1891; (*p*) and sub-s. (2) extends to these policies the power to compound for stamp duties on insurance policies. The effect of these enactments is to put these policies on the same footing as accident policies (*q*) and sickness policies (*r*).

S. 9 removes the absolute prohibition against stamping proxies after execution so far as respects proxies executed out of the United Kingdom.

S. 10 reduces from 2*s.* 6*d.* to 6*d.* per cent. the duty payable in

(*p*) 54 & 55 Vict. c. 38.

(*q*) See ss. 98 (1) and 116 of the Stamp Act, 1891.

(*r*) See s. 13 of the Finance Act, 1895, 58 & 59 Vict. c. 16, and s. 13 of Finance Act, 1896, 59 & 60 Vict. c. 28.



the case of the conversion or consolidation of loan capital on which duty is paid under s. 8 of the Finance Act, 1899. (s)

Part III.: S. 12 substitutes the scale in the Schedule I. of the Act for the scale of rates of estate duty contained in s. 17 of the Finance Act, 1894. (t) The new scale (which took effect as respects all persons dying on or after April 19, 1907—the day following the Budget statement) is the same as the old scale till the estate exceeds £150,000; as respects estates between £150,000 and £1,000,000 the new rate increases by steps of £1 instead of 10s., and the old step between £500,000 and £1,000,000 is divided into two. Under the old scale estates above £1,000,000, whatever the amount, paid 8 per cent., while under the new scale they will pay 10 per cent. on the first million, and the excess over one million will be charged as follows, namely, at 10 per cent. plus 1 per cent. for each £500,000 or part of £500,000 up to a maximum charge of 15 per cent. which is reached when the estate exceeds £3,000,000.

A proviso to the section (u) protects persons who have bought or advanced money on reversions from being prejudiced by the increase of duties under the section.

Part IV. of the Act consists of one section only dealing with payments to the Local Taxation Accounts of England, Scotland, and Ireland. Before the Act certain grants payable out of the proceeds of estate duty, and the proceeds of certain duties known as the Local Taxation (Customs and Excise) Duties (duties on spirits and beer, the proceeds of which are commonly known as “the whisky money”) and the proceeds of the Local Taxation Licences Duties (*e.g.* duties on public-house licences, dog licences, gun and game licences), were paid direct into the Local Taxation Accounts; under the Act there will no longer be any interception of special revenue, but the Local Taxation Accounts will receive direct from the Consolidated Funds equivalent amounts. The section (which took effect as from April 1, 1907) does not in any way affect the distribution as between local authorities of the grants and sums with which the Act deals, but merely emphasises the control of the Chancellor of the Exchequer over the duties in question.

Part V. deals with income tax. S. 18 reimposes the income tax at the rate of one shilling for the year 1907-08. S. 19 gives effect to the Report of the Select Committee of the House of Commons which sat in 1906 and reported in favour of the practicability of differentiating for the purposes of income tax between earned and unearned

(s) 62 & 63 Vict. c. 9.

(t) 57 & 58 Vict. c. 30.

(u) Following s. 21 (3) of the Finance Act, 1894, 57 & 58 Vict. c. 30, and s. 12 (1) of the Finance Act, 1900, 63 Vict. c. 7.

income. Under the section any person whose *total* income does not exceed £2,000 pays income tax at the rate of 9*d.* only on so much of the income as is "earned income," a term defined in sub-s.(7). SS. 20–28 make various amendments, mostly of a very technical character, in the Income Tax Acts. Of these amendments those of most general interest are perhaps that contained in s. 22, which requires every person who receives the familiar buff paper to make a return of his income under Sch. D or Sch. E, whether he is or is not chargeable with duty, whereas previously the return was not required in the case of a person not chargeable; and that contained in s. 22, which deals with deductions for wear and tear of machinery and plant. It may be noticed that ss. 21 to 26 give effect to various suggestions made by the Departmental Committee on Income Tax, of which the late Lord Ritchie was chairman, which reported in 1905. (*x*)

(iii.) *Public Works Loans* (No. 36, U.K.).—S. 1 authorises the issue of £3,700,000 for loans for public works. S. 3 is a statutory transfer to the Secretary of State for War of all the mortgages held by the Public Works Loan Commissioners on the lands belonging, and parliamentary grants payable, to Volunteer corps. S. 4 provides for a loan to Jamaica of a sum not exceeding £800,000 to repair the earthquake damage, and s. 5 for a loan to Southern Nigeria of a sum not exceeding £2,000,000 for railway construction.

(iv.) *Transvaal Loan (Guarantee)* (No. 37, U.K.) gives the Treasury power to guarantee a loan by the Transvaal not exceeding an amount of stock sufficient to raise £5,000,000, or stock of nominal amount of £5,000,000, whichever is least.

(v.) *Telegraph (Money)* (No. 6, U.K.).—This Act enables the Treasury to issue out of the Consolidated Fund sums not exceeding £6,000,000 for the development of the Post Office telephonic system.

**India.**—*Council of India* (No. 35, U.K.).—This Act effects certain reforms with respect to the Council of India, viz.—

- (1) The number of members is fixed at a maximum of fourteen and a minimum of ten; (*y*)
- (2) A member of the Council must not have left India more than five years (instead of ten years) before appointment;
- (3) The salary of members is reduced from £1200 to £1000.
- (4) The term of office of future members is reduced from ten years to seven years.

**Industrial.**—(i.) *Factories and Workshops* (No. 39, U.K.).—The principal innovations made by this Act are:—

(*x*) Parliamentary Paper, 1905, Cd. 2575.

(*y*) Previously the number was fixed at fifteen, but the Secretary of State had power by not filling up vacancies to reduce the number to ten, and had in fact, by exercising this power, reduced the number to twelve.



(1) Ss. 1-4, which deal with employment in laundries. The provisions of the Factory Act, 1901 (*z*), are by s. 1 applied to laundries as though laundries were "non-textile factories" within the meaning of that Act, but a special provision is inserted (s. 2) with respect to the hours of employment of women. S. 3 prescribes special regulations in laundries as to the provision of fans, the manner of using stoves and heating irons, and the condition of the floors.

(2) S. 5, which deals with the employment of labour in "charitable and reformatory" institutions which would not otherwise be liable to the provisions of the Factory Act, 1901, owing to their not being carried on for purposes of gain. That Act is applied to all such institutions in which articles are "made, altered, repaired, ornamented, finished, washed, cleaned, or adapted for sale"; power is, however, given to the Home Secretary in certain cases to direct that the Act shall apply only subject to modifications, the chief of which are that the managers may submit a scheme of hours of employment, etc., which, if approved by the Home Secretary and not annulled by Parliament, will take the place of the provisions of the Act, (*a*) and that (in the case of reformatory institutions) the managers will have power, unless the Home Secretary interferes, to prevent any inmate from being examined by an inspector except in the presence of one of the managers or the person in charge of the institution.

(ii.) *Employment of Women* (No. 10, U.K.).—This Act was passed in order to make possible the ratification of the Berne Convention of 1906, by which the contracting States undertook to prohibit the employment of women at night for a period of at least eleven consecutive hours. It repeals the only two statutory provisions of the English law by which such employment was permitted, viz. the provisions on the subject in the Coal Mines Regulation Act, 1887, (*b*) and the Factory and Workshop Act, 1901, (*c*) as to the employment of women in mines and flax scutch mills respectively.

(iii.) *Employers' Liability Insurance Companies* (No. 46, U.K.).—The necessity of this Act arose largely from the great increase of employers' liability insurance consequent on the passing of the Workmen's Compensation Act, 1906. (*d*)

The Act applies to all companies carrying on the business of insuring employers against liability to pay compensation or damages to workmen in their employment (subject to such necessary modifications and adaptations as may be made by Order in Council) the provisions of the Life

(*z*) 1 Edw. VII. c. 22. See *supra*, p. 80.

(*a*) The scheme must, however, not be less favourable to employees than the corresponding provisions of the Act.

(*b*) 50 & 51 Vict. c. 58.

(*c*) 1 Edw. VII. c. 22.

(*d*) 6 Edw. VII. c. 58. See *supra*, p. 131.

Assurance Acts, 1870 to 1872, the chief of which relate to the payment of a deposit of £20,000 into Court before any business can be carried on, the keeping of separate accounts and funds, the making of annual reports to the Board of Trade, and compulsory periodical actuarial investigations and valuations. The Acts also contain provisions for notices of proposed amalgamations or transfers being given to policy-holders.

Companies which commenced carrying on business before the Act was passed are exempt from the provisions as to deposits, and an entire exemption from the provisions of the Act is given in the following cases :—

- (1) Companies who carry on their business as incidental to the business of marine insurance by issuing marine policies covering employers' liability as well as marine adventure.
- (2) Associations of employers who satisfy the Board of Trade that they are carrying on business wholly and mainly for the purpose of mutual insurance.
- (3) Members of Lloyd's and other associations of underwriters approved by the Board of Trade, who comply with certain requirements set out in the schedule to the Act.

**Injured Animals** (No. 5, U.K.).—This Act re-enacts with amendments the Injured Animals Act, 1894. (*e*) The Act of 1894 enabled police constables to slaughter, or cause to be slaughtered, any horse, mule, or ass so severely injured that it could not, without cruelty, be led away. The new Act preserves the old law, but also extends it to cattle, sheep, goats, and pigs, and to cases where the animal is so diseased or in such a physical condition that it cannot be removed without cruelty, and also gives power to remove the carcase of the slaughtered animal.

**Lights on Vehicles** (No. 45, E.I.).—Before the passing of this Act the lights to be carried on vehicles at night were regulated by bylaws under the Local Government Act, 1888, (*f*) the Municipal Corporation Act, 1882, (*g*) and also by various local and personal acts.

This Act makes statutory provisions which will apply to the whole of England, Wales, and Ireland with respect to the lights to be carried.

S. 1 provides that every vehicle, between one hour after sunset and one hour before sunrise, is to carry at least one effective light on the off or right side of the vehicle. If any light is carried which is visible from the rear the light must be a red light, and a light visible from the rear is compulsory in the case of any vehicle carrying loads projecting more than six feet to the rear. By s. 2 a penalty not exceeding forty shillings, or for subsequent offences £5, is imposed for a breach of these provisions.

(*e*) 57 & 58 Vict. c. 22.

(*f*) 51 & 62 Vict. c. 41.

(*g*) 45 & 46 Vict. c. 50.



The Act provides for certain exemptions, namely—

- (1) Bicycles, motors, and other road locomotives which independently are under a statutory obligation to carry lights.
- (2) Vehicles drawn or propelled by hand.
- (3) Such vehicles in the public service as may be exempted by Order in Council in the interests of the naval or military services.
- (4) Borough Councils may, with the consent of the Home Secretary, exempt certain vehicles carrying inflammable goods.
- (5) County Councils may exempt certain vehicles engaged in harvesting operations.

With these exceptions, however, the Act applies to all vehicles and any machine or implement drawn by animal traction.

All existing bylaws on the subject are repealed, but power is given for local authorities to make bylaws imposing on vehicles in their district additional obligations with respect to carrying lights.

**London Cabs and Stage Carriages** (No. 55, E.).—This Act effects certain reforms in the management of public vehicles mostly necessitated by the growth of motor traffic, but applies only to London, *i.e.* to the Metropolitan Police District and the City.

S. 1 enables the Home Secretary to fix the fares to be paid for taximeter cabs, either on the basis of time or distance, or on the basis of a combination of time and distance, with a minimum fare of sixpence.

S. 2 (which remains in force only till the end of 1909) practically abolishes the system of “privileged” cabs at railway stations.

S. 3 enables the Home Secretary to apply the provisions of the Acts relating to stage carriages (*h*) in London (which will include all provisions as to licences, etc.), to stage carriages which on every journey go to or from places outside London, which carriages were, before the passing of the Act, exempt from these provisions.

S. 4 enables the Commissioner of Police to regulate the stopping-places for omnibuses and tramcars; and

S. 5 applies s. 48 of the Tramways Act, 1870, (*i*) which confers power on local authorities to make regulations as to licences, etc., for carriages on *tramways*, and which formerly applied only to tramways under the Tramways Acts, to cars run on lines which, though in their nature tramways, were constructed as light railways, under the Light Railways Act, 1896. (*k*)

**Marriage.**—(*i*.) *Matrimonial Causes* (No. 12, E.).—This Act makes certain small amendments in the practice of the Divorce Court in relation to maintenance.

(*h*) *I.e.* omnibuses and tramcars.

(*i*) 33 & 34 Vict. c. 78.

(*k*) 59 & 60 Vict. c. 43.

(1) It extends to decrees of nullity of marriage the power given in case of decrees for dissolution by s. 32 of the Matrimonial Causes Act, 1857, *(l)* and s. 1. of the Matrimonial Causes Act, 1866, *(m)* under which payments, either by way of lump sums or by way of monthly or weekly sums, may be ordered to be made by the husband to the wife on a decree for dissolution; previously there was no such *statutory* power in case of decrees of nullity.

(2) It gives power to make an order for payment of a monthly or weekly sum in addition to, as well as instead of, an order for a lump sum, and, in any case where the husband's means increase, to make an order increasing any amount payable monthly or weekly (s. 1).

S. 2 repeals the above-mentioned sections of the Acts of 1857 and 1866, which are re-enacted in s. 1.

(3) S. 3 gives the Court power to allow persons to intervene on terms in suits for dissolution.

(ii.) *Deceased Wife's Sister* (No. 47, U.K.).—S. 1 provides that marriages with a deceased wife's sister (which includes a sister of the half-blood: s. 5) wherever contracted are not to be, or to be deemed to have been, void or voidable as a civil contract.

There are three provisos to the section, of which the first saves persons in Anglican orders from civil or ecclesiastical liability for acts or omissions to which they would not have been liable if the Act had not passed, and the second enables an incumbent who has refused to celebrate such a marriage in his church to permit another clergyman to celebrate it.

S. 2 saves existing rights and interests from being prejudiced by the validation of marriages contracted before the passing of the Act.

S. 3. Notwithstanding the Act, adultery with a wife's sister continues to constitute a ground of divorce for the wife, and in case of divorce the husband cannot marry the wife's sister during the lifetime of the wife.

**Merchant Shipping** (No. 52, U.K.) *(n)*.—To ascertain the register tonnage of a ship certain deductions are made from the gross tonnage, under s. 78 of the Merchant Shipping Act, 1894, *(nn)* on account of propelling space, and under s. 79 on account of crew-space and certain other matters.

The effect of this Act is to limit the deduction which can be made under s. 78 of the Act of 1894 to 55 per cent. of the tonnage which remains after deducting from the gross tonnage the deductions allowed under s. 79.

**Partnerships.**—*Limited Partnerships* (No. 24, U.K.).—This Act

*(l)* 20 & 21 Vict. c. 85.

*(n)* See *supra*, p. 134.

*(m)* 29 & 30 Vict. c. 32.

*(nn)* 57 & 58 Vict. c. 60.



authorises the creation of limited partnerships. Such partnerships, corresponding to the *société en commandite* of foreign law, have long been known in the United States; but although the question of the legalisation of limited partnerships arose in this country soon after the decision in *Cox v. Hickman* (1860), (o) and a Bill for the purpose was introduced as early as 1862, and again in many subsequent years, it has taken nearly half a century of agitation to procure the necessary Parliamentary sanction. It remains to be seen how far use will be made of the Act now that the Companies Act (p) has recognised and given special treatment to the "private company."

The Bill for the Act was considerably modified in its passage through Parliament, and in particular (owing to the opposition of the bankers) the provision enabling a person to become a limited partner by undertaking to contribute, instead of by actually contributing, capital, was struck out.

The Act, which is somewhat inaccurately called "an Act to *establish* Limited Partnerships," consists of seventeen sections, and its principal provisions are as follows :—

A limited partnership will be subject to the ordinary law of partnership except so far as the Act provides to the contrary (s. 7), and must consist of at least one "general partner" whose liability for the firm obligations is the same as that of a partner in an ordinary firm, and one "limited partner" whose liability only extends to the capital brought by him into the firm at the time he enters it, and who is precluded, under pain of becoming *pro tanto* a general partner, from withdrawing any part of that capital during the continuance of the partnership (s. 4).

Every limited partnership must be registered, and in default the limited partners will become general partners (s. 5); the manner and particulars required to be stated on registration (among which are the terms of the partnership and the capital contributed by each limited partner) are provided for by s. 8, and s. 9 requires registration (under a continuing daily penalty of £1) of any change in the registered particulars; under s. 16 any person has a right, on payment of a fee, to inspect the statements registered under the Act, and s. 17 gives power to make rules as to registration under the Act.

The important provisions as to the modification of the general law in case of limited partnerships are contained in s. 6, and are as follows :—

Sub-s. (1). A limited partner may inspect the firm's books, examine into the state of the partnership business, and advise with the partners thereon, but otherwise may take no part in the business and cannot

(o) 8 H. L. C. 268.

(p) See *supra*, p. 142.

bind the firm; to take part in the business involves unlimited liability for all obligations of the firm incurred during the time of the contravention.

Sub-s. (2). Death or bankruptcy does not dissolve the partnership, and lunacy does not necessarily give the Court power to dissolve.

Sub-ss. (3) and (4). On a dissolution, the general partners wind up the firm's affairs, unless the Court otherwise orders, and applications to the Court to wind up are to be under the Companies Acts, subject to modifications made by Rules.

Sub-s. (5), which only operates in default of agreement express or implied, *inter alia* allows a limited partner, with the consent of the general partners, to assign his share, and a person to be introduced as partner with the consent of the limited partners.

**Patents and Designs.**—(i). *Patents and Designs (Amendment)* (No. 28, U.K.)—This Act was repealed as soon as it came into force by the Consolidation Act, in which all of its provisions are incorporated. It contains numerous amendments of the Patents and Designs Acts, many of which relate to procedure and are of so technical a character that it is not possible to state their effect intelligibly within the scope of this article.

Part I. deals with patents. The most important innovations which it effects are—

S. 1, which deals with the granting of patents to two or more persons.

S. 4, by which, if an applicant deposits several provisional specifications which are cognate, or modifications one of another, the Comptroller may grant a single patent in respect of all the applications.

S. 5, which legalises the grant of "patents of addition" for improvements in existing patents for the same term as the term of the original patent (thereby rendering possible a saving of renewal fees).

S. 9, which provides that a patent is not to be held invalid on the ground of disconformity.

S. 14, which enables any persons who would have been entitled to *oppose* the grant of a patent, within two years from the date of the patent to obtain an order *revoking* the patent on any grounds on which the grant of the patent might have been opposed.

S. 15, which provides for the revocation of patents on the ground that the patented article is manufactured exclusively or mainly outside the United Kingdom.

S. 25, which invalidates contracts for the sale of, or licences to use patented articles containing conditions the effect of which is to prohibit the purchaser or licensee from using any article or class of articles supplied or owned by any person other than the seller or licensor, or to



require the purchaser or licensee to acquire from the seller or licensor any article or class of articles not protected by the patent.

This part also contains other provisions for the simplification of procedure, and provisions relating to chemical inventions (s. 3), official investigations (s. 6), grounds of opposition (s. 10), the transfer of the jurisdiction of the Privy Council on petitions for the grant of compulsory licenses to Court (s. 16), the application of the provisions of the Patents Acts as to secret patents to the Admiralty as well as the War Office (s. 21), anticipation (s. 22), the restoration of lapsed patents (s. 23), and the exemption of "innocent infringers" from liability for damages (s. 27).

Part II. deals with designs, and contains (besides provisions as to the procedure on the application for the registrations of designs, etc.) provisions as to the extension of the five years' period of copyright for a further period of five years, or in some cases ten years (s. 31), for the cancellation of the registration of the designs used wholly or mainly abroad (corresponding to the similar provision, noted above, relating to patents) (s. 35), and applying the provisions of the Patents Acts as to certificates of validity and remedy in the case of groundless threat of legal proceedings to designs (s. 37).

Part III. contains provisions for general purposes, including the establishment of branch offices for designs at Manchester and elsewhere, and the imposition of a penalty on the misuse of the words "Patent Office." Other sections in this part deal with rectification of registers (s. 40), "excluded days" (s. 42), the misuse of the word "Registered" (s. 43), and of the Royal Arms (s. 44), the giving of evidence before the Comptroller by statutory declaration (s. 45), and patent agents (s. 48).

(ii.) *Patents and Designs* (No. 29, U.K.)—This Act is a consolidation of all the previously existing Acts dealing with patents and designs, including the Patents and Designs (Amendment) Act of the same year, (q) all of which are repealed. (r)

**Public Health.**—(i.) *Public Health (Regulations as to Food)* (No. 32, U.K.).—Before this Act was passed the only powers outside the Sale of Food and Drugs Act for dealing with unsound food were conferred by ss. 116–19 of the Public Health Act, 1875, (s) and s. 28 of the Public Health Acts Amendment Act, 1890, (t) which were insufficient to enable food stuffs coming from abroad to be examined and dealt with at the port of their arrival.

This Act enables the Local Government Board to make regulations

(q) See *supra*, p. 98.

(r) The Patents and Designs Act, 1908 (8 Edw. VII. c. 4), which removes an ambiguity in s. 92 of this Act with respect to the finality of a judge's decision on a petition for revocation under s. 25, should be noted.

(s) 33 & 39 Vict. c. 55.

(t) 53 & 54 Vict. c. 59.

authorising measures to be taken for the prevention of danger to public health from the importation, preparation, storage, and distribution of articles of food or drink intended for sale for human consumption (including such measures as examination and taking samples), and applying, as respects any matters dealt with by the regulations, any provisions of any Act of Parliament dealing with the like matters.

The Act applies the provisions as to Local Government Board regulations, under the Public Health Act, 1896,<sup>(u)</sup> to regulations under the Act. This enables the Local Government Board to impose a penalty not exceeding £100 for breaches of their regulations, and to provide that the regulations may be enforced and executed by officers of Customs.

(ii.) *Vaccination* (No. 31, E.).—Under the Vaccination Act, 1898,<sup>(x)</sup> in order to obtain exemption from the penalties on the non-vaccination of infants on the ground of conscientious objection, it was necessary that the objector should obtain a certificate from two justices, or a stipendiary, of his conscientious objection. Under the new Act it is sufficient if within four months of the birth of the child the parent or other person responsible for the vaccination of the child, makes a statutory declaration that he conscientiously believes that vaccination would be prejudicial to the child's health, and within seven days thereafter sends the declaration to the vaccination officer of the district.

(iii.) *Notification of Births* (No. 40, U.K.).—This Act, which is not a registration enactment (para. (4) of s. 1) but aimed at diminishing infant mortality, makes it the duty of the father of a child and of persons in attendance on the mother, to give notice of its birth within thirty-six hours of the birth to the District Medical Officer of Health. The provisions of the Act apply to stillborn children, and failure to comply with the Act involves a penalty not exceeding twenty shillings.

This Act only takes effect in the areas of local authorities (county, borough, or district councils) by whom it is adopted, or in which it is declared to be in force by an order of the Local Government Board (ss. 2 and 3).

(iv.) *Public Health Acts Amendment* (No. 50, E.I.).—This Act contains ninety-four sections containing detailed provisions as to (1) streets and buildings, (2) sanitary matters, (3) infectious diseases, (4) common lodging-houses, (5) recreation grounds, (6) police, (7) fire brigades, (8) sky signs, and (9) bathing places, pleasure boats, etc. These provisions are in separate parts, and the several parts only extend to the urban or rural districts to which they are applied by an order of the Local Government Board or (in case of the parts relating to police, fire brigades, and sky signs) of the Home Secretary.

(u) 59 & 60 Vict. c. 19.

(x) 61 & 62 Vict. c. 49. See *supra*, p. 23.



**Released Persons (Poor Law Relief) (No. 14, E.).**—This Act deals with the question of what union is to be liable for the relief of persons in need of relief who are discharged from prisons, reformatory and industrial schools, and inebriate reformatories.

Formerly where the place of settlement of such persons could not be ascertained, they had to be sent to the workhouse of the union in which the prison, etc., was, and an unfair burden was thereby imposed on the rates of that union. By this Act (which follows the precedent of the Criminal Lunatics Act, 1884, (y)) the union *prima facie* liable for their maintenance is the union in which the discharged person ordinarily resided when the offence for which he was serving his time was committed; if this cannot be ascertained the union in which the offence was committed is liable.

**Small Holdings and Allotments (No. 54, E.).**—This Act marks an important advance in the legislation on these subjects. (z)

(1) As regards small holdings, the Act provides for the appointment of Small Holdings Commissioners, to be paid out of the public funds, whose duty it is, in co-operation with local authorities, to ascertain the extent to which there is a demand for small holdings in each county, and the extent to which the demand can be satisfied, and to report to the Board of Agriculture. It thereupon becomes the duty of county councils to prepare schemes for carrying into effect the recommendations of the commissioners. These schemes are sent to the Board, who may confirm or annul them, and if they are confirmed a duty is cast upon the county councils to carry them into effect. If any council refuses to make a scheme the commissioners may make a scheme for them, and if a council fails to carry into effect a scheme when made, the Board may direct the commissioners to carry it into effect at the expense of the council in default (ss. 1–5).

The Act also makes various amendments of the Small Holdings Act, 1892. The most important is that county councils are enabled to acquire land compulsorily for small holdings by purchase or lease, (a) and, amongst other minor amendments, power is given to county councils to delegate their powers to borough or urban district councils (ss. 6–15).

The Board of Agriculture is given the power of establishing experimental small holdings in any locality “with a view to demonstrating the feasibility of the establishment of small holdings,” and also the important right of repaying the whole or any part of the expenses (other than purchase-money, rent, or compensation) incurred by a

(y) 47 & 48 Vict. c. 64, s. 8.

(z) This legislation is now consolidated by the Small Holdings and Allotments Act, 1908 (8 Ed. VII. c. 36), by which all the existing enactments on the subject, including this Act, are repealed.

(a) See *infra*, p. 159.

council in proceedings relating to the acquisition of land for small holdings (ss. 16 and 17).

(2) With regard to allotments the principal amendments of the law are:—

- (a) The Board of Agriculture is substituted for the Local Government Board as the department interested in allotments.
- (b) The powers of rural district councils under the Allotments Acts are transferred to parish councils, the result of which is that hereafter the allotment authority will be—in boroughs, the borough council; in urban districts, the urban district council; and elsewhere, the parish council.
- (c) The maximum extent of any one allotment is increased from one acre to five acres, and dwelling-houses may be erected on allotments.
- (d) A duty is cast upon county councils to ascertain the demands for allotments in their county.

(3) With regard to the compulsory acquisition of land, whether for small holdings or allotments, the procedure is for the council which wishes to acquire the land to submit to the Board an order for the compulsory purchase or hiring of the land, and the order, if confirmed by the Board after due publication and inquiry, has statutory force. The Lands Clauses Acts are applied, but a single arbitrator is to decide all questions of disputed compensation, and he may disallow costs unnecessarily incurred and is not to add anything to the compensation on account of the purchase being compulsory. Counsel and expert witnesses are only to be heard at inquiries in exceptional cases by leave of the Board. Certain restrictions are imposed on the compulsory acquisition of pleasure-grounds, statutory undertakings, land in undue quantities, etc. (ss. 26 and 30 and Schedule III.).

(4) Among the supplemental provisions are provisions as to the establishment of a Small Holdings and Allotments Committee of county councils, separate small holdings and allotments accounts, the promotion and assistance of co-operative societies, etc.

**Women.**—(i.) *Married Women's Property* (No. 18, E.I.).—S. 1 gets rid of the inconvenient construction put on s. 18 of the Married Women's Property Act, 1882, (b) in the case of *In re Harkness and Allsopp's Contract*, (c) in which it was held that a married woman trustee could not convey real estate as a *femme sole*. Under the new enactment a married woman is put exactly in the position of a *femme sole*, as regards disposition of trust estates.

S. 2 enacts that a settlement, or agreement for a settlement, by a husband or intended husband, respecting the property of the wife or

(b) 45 & 46 Vict. c. 75.

(c) [1896] 2 Ch. 353.



intended wife, is not to be valid unless executed by her if she is of full age, or confirmed by her after attaining that age if she is an infant, and thus overrules the law as laid down in *Buckland v. Buckland* (*d*), and cases there cited, where it was decided that by virtue of s. 19 of the Act of 1882, the husband *alone* could, by settlement, bind any property of the wife to which he would have been entitled by marital right before the Act of 1882.

S. 3 removes the doubt which had existed whether a married woman alone could be protector of a settlement in respect of a life estate which was her separate property under the Act of 1882.

(ii.) *Qualification of Women (County and Borough Councils)* (No. 33, E.).—This Act provides that a woman is not to be disqualified by sex or marriage from being a county or borough councillor or alderman.

The Act allows women to be chairmen of county councils or mayors, but provides that they are not to be ex-officio justices.

It must be observed that the Act (except in its application to London) is much more limited in operation than would at first sight appear. A woman will, notwithstanding the Act, be ineligible for election, if she is not a person qualified to vote at the election, and the consequence of this is that married women will remain altogether ineligible, and all women who own but do not occupy land will be in the same position.

**Scotland** (No. 49, S.).—This Act is the Scotch version of the English Vaccination Act. (*e*) It enables parents in Scotland to obtain exemption from the penalties for not having their children vaccinated by making a statutory declaration of conscientious objection.

*Qualification of Women (County and Town Councils) (Scotland)* (No. 48, S.).—This Act makes corresponding provisions as to the removal of women's disqualification in the case of Scottish local councils.

**Ireland** (No. 3, I.).—This Act repeals the Tobacco Cultivation Act, 1831, (*f*) and all other Acts, so far as they prohibit the planting of tobacco in Ireland. The repeal, however, is only to take effect as from a date to be fixed by Order in Council, after Parliament has imposed an Excise duty on Irish-grown tobacco. (*g*)

Except for an interval between 1799 and 1831, the planting of tobacco has been prohibited in Ireland since 1660 (*h*), the prohibition having been, as the preambles of the Acts of Charles II. expressly state, imposed in the interests of "the Colonies and plantations of this Kingdome in America."

(*d*) [1900] 2 Ch. 534.

(*e*) See *supra*, p. 23.

(*f*) 1 & 2 Wm. IV. c. 13.

(*g*) S. 3 of the Finance Act, 1908, imposes an Excise duty and makes the repeal take effect as from January 1, 1909.

(*h*) See 12 Chas. II. c. 34, and 15 Chas. II. c. 7.

## II. ISLE OF MAN. <sup>(a)</sup>

Situated so near England, and to a large extent dependent on English money, the tendency has been to assimilate the legislation to the legislation of the English Parliament <sup>(b)</sup> in matters material to so small an island.

The periods of legislative activity were during the Lieutenant-Governorships of Mr. Loch (afterwards Lord Loch) and Sir Spencer Walpole. From time to time other legislation has been passed as occasion demanded.

From 1860–1871 Acts of Tynwald of importance were the Summary Jurisdiction Act; the Companies Act; the Asylum Act (to provide for lunatics); the Registration of Deeds Act, 1868; the Wills Act, 1869; the Real Property Act, 1869; the Evidence Act, 1871.

From 1872–1878—the Bankruptcy Act, 1872; the Criminal Code, 1872; the Advocates Act, 1874; various Highway Acts; Acts providing civil registration, and the Elementary Education Act; also a Vaccination Act.

From 1879–1886—the Dangerous Goods Act, 1881; the Rating Act, 1881; the Burials Act; the Tithe Commutation Act, 1883; the Isle of Man Judicature Act, 1883; the Bills of Exchange Act, 1883; the Ecclesiastical Civil Judicature Transfer Act, 1884; the Local Government Act, 1886.

From 1887–1895—the Poor Relief Act, 1888; the Statute of Limitation, 1891; the Settled Land Act, 1891; the Bankruptcy Code, 1892; the Sale of Goods Act, 1895; the Married Women's Protection Act, 1897; the Merchandise Marks Act, 1898.

The Acts mentioned above are all (more or less) framed on the model of the English Acts of Parliament.

Later Acts of Tynwald include—in 1906: The Pedlars and Street Traders Act; in 1907: the Copyright Act; the Loans (Infants) Act; the Regulation of certain Classes of Shops Act; the Gaming and Betting Act; the Obscene Publication and Indecent Advertisement

<sup>(a)</sup> Contributed by His Honour S. Stevenson Moore, First Deemster.

<sup>(b)</sup> Customs Acts relating to the island were passed by the English Parliament in 1898 (No. 27), 1899 (No. 39), 1900 (No. 31), 1903 (No. 35), 1904 (No. 25), 1905 (No. 15), 1906 (No. 18), and in 1907 (No. 26). Certain Acts are extended to the island, viz. Teachers' Superannuation Act, 1900 (No. 38, see *supra*, p. 17), Public Health Act, 1904 (No. 16, see *supra*, p. 121), Trade Marks Act, 1905 (No. 15, see *supra*, p. 127), Army Act, 1907 (No. 2, see *supra*, p. 138), and Territorial and Reserve Forces Act, 1907 (No. 9, see *supra*, p. 139).



Act; the Higher Education Act, to provide a modicum of secondary education; and finally, an Educational Endowments Act, which enables the Council of Education to make schemes for the application of educational endowments.

The general law of the island is now almost assimilated to that of England.

### III. JERSEY. (a)

**1898 Official Time.**—Greenwich time adopted as the official Jersey time.

**1899 Elementary Education.**—An Act of 1899 makes this compulsory, and places the elementary education of the island on a similar footing to the system in England. The schools are inspected by the English Government Department.

**1900 Medicine.**—A law was passed to regulate the practice of surgery and medicine in the island, this year, and designating the degrees which will permit their holders to register.

**Fisheries.**—Another law was passed to regulate, protect and develop the fisheries of the island. By it inspectors of fisheries were appointed.

**1901 Liquor Licences.**—A law of this year repeals the law of 1883; licences are divided into two categories, "special" and "ordinary."

The "special" permits the sale of spirituous liquors at all times and at all hours to persons residing on the premises, and from 6 a.m. to 11 p.m. during May to September inclusive, and to 10 p.m. during the other months of the year to outsiders.

The "ordinary" licensees possess similar powers, with the exception of the right to sell on Sundays.

A kind of local option exists, whereby the parish assembly (consisting of ratepayers with a special rate qualification) consider applications for licences, and recommend the Licensing Assembly to grant or refuse. The right of the latter assembly to grant or refuse is, however, absolute.

A wine merchant must register his place of business and pay a licence.

A club must apply to the Licensing Assembly to be registered, and guarantees are required that the club is a *bonâ fide* social club, regularly electing its members, etc., and that no member is directly interested in the sale of liquor to the members of the club.

**1902 Bequests of Land.**—A law of this year extends the powers of willing realty already existing under the Law on Wills of 1851. Under the law of 1851, a person possessing realty in the island could not will the same if he had children or other descendants. This restriction is removed by the law of 1902, so far only, however, as concerns realty which was bought by the testator.

**Exclusion of Foreign Religious Orders.**—Another law of this year prohibits the settling of foreign religious orders in the island, passed in view of the fact that many religious orders expelled from France took up residence in Jersey. The law does not apply to religious orders already established in the island, prior to the date of the introduction of the Bill, such as Jesuits.

**1903 Militia Law.**—The only legislation of importance during 1903 is the law on the Militia, passed by the States of Jersey on March 10, 1903, and confirmed by Order in Council dated May 20, 1903. (b)

This law repeals the Militia Law of 1881. Under its provisions every inhabitant of Jersey is liable, from the age of sixteen to that of forty-five inclusive, to serve in the Royal Jersey Militia—

- (a) if he is a native of Jersey or if his father were a native of the island;
- (b) if, being a British subject, he holds real property in the island, either in his own name or in that of his wife, or carries on in the island a profession, trade, or calling.

A person is deemed an inhabitant if he have resided in the island for a period of two years.

The service, which is gratuitous, personal, and compulsory, is divided into three categories:—

- (1) Preparatory Service.
- (2) Active Service.
- (3) Reserve.

The establishment of the force is to be eighteen hundred men, not including officers.

The active service is to be ten years, but may be reduced by the Lieutenant-Governor. From the active service the men are to be transferred to the Reserve, where they remain until they complete forty-five years of age. So far as the active service is concerned, a contingent

(b) See *infra*, p. 165.



of one thousand men is to undergo annually a training in camp of nine days, and will have also to do firing exercises and manœuvres (eight days, not consecutive).

The training in camp is to be carried out in four sections, at different times of the year, to suit the convenience of the men and the population generally. As an exception to the principle of gratuitous service, men undergoing training in camp will be paid. To obtain the men required, an appeal will be made to the islanders to volunteer. In the event of an insufficient number of volunteers coming forward, recourse will be had to a system of ballot amongst those liable to serve, in order to bring the force up to the required strength. The reservists will do four days' drill annually up to thirty-five years, and after that age only two.

The Militia is to consist of two regiments, one of artillery and the other of infantry. A portion of the cost of maintaining this force is at the charge of the States of the island; the remainder is to be defrayed by the British Government. This Militia will be under the Army Act, 1881. (c)

**1904 Betting Law.**—An Order in Council dated March 28, 1904, sanctions a law passed by the States of Jersey on February 24, 1903, and February 28, 1904, on betting.

Art. I. prohibits the establishing or keeping of an office of any nature whatsoever for the purpose of making, proposing, accepting, or receiving bets. It also prohibits the making, proposing, accepting, or receiving of bets in any public road or place, either as principal or as agent, either on commission on the result of horse races or of any other sport or competition.

The penalty is a fine not exceeding £10 for first offence and £100 in case of repetition of offence, or in default imprisonment with or without hard labour at the discretion of the Court for a period not exceeding six months.

Art. II. prohibits the announcement either in the public press or by any other means directly or indirectly that bets are made, proposed, accepted, or received in any office or place whatsoever, either in the island or elsewhere, under a penalty of from £5 to £50.

Art. III. renders the proprietor of a newspaper publishing a betting advertisement liable to a fine of from £5 to £50.

**Cadet Corps.**—An Order in Council dated April 21, 1904, confirms a law passed by the States on January 14, 1904, to permit and encourage the formation in the island schools of cadet corps, and

attaching these bodies to the regiments of the Royal Jersey Militia. The arms and ammunition are supplied by the Government.

**Fishery Law.**—An Order in Council dated October 24, 1904, sanctions a triennial law passed by the States on March 15, 1904, on the subject of the local fisheries and the sale of fish. The law only applies to the island coast fisheries, but clause 10 prohibits fishing on Sunday.

**Financial Administration Law.**—An Order in Council dated November 14, 1904, confirms a law passed by the States on February 5, 1904, relative to the administration of the public finances. The law provides for the life appointment of two auditors (one legal) and for the manner in which the States Budget shall be introduced and discussed in the Assembly.

**1905 Militia Law.**—The law passed in 1903 on the Jersey Militia (*d*) was repealed in 1905. The new law, passed on October 10, 1905, and sanctioned by Order in Council dated December 11, 1905, has merely effected certain changes as to procedure, but in no way affects the main principles of the law of 1903.

**1907 Trading Stamps.**—An Order in Council of February 11, 1907, confirmed an Act passed by the States on July 9, 1906, on trading stamps.

Art. I. defines trading stamps as being any receipt, coupon, note, stamp, or other document distributed by a tradesman in Jersey, or by his agent, to a customer in order to secure to the latter either a premium, an advantage, or a reduction on the price of goods, payable by a third party either in money or merchandise.

Art. II. provides that any person, either as principal or agent, who directly or indirectly traffics in trading stamps in Jersey commits a misdemeanour, and is liable for each infraction to a fine not exceeding £50, or, in default of payment, to an imprisonment not exceeding three months.

Art. III. provides that the law should come into force six months after its confirmation by the King in Council.

**Free Education.**—A law passed by the States of Jersey on April 25, 1907, provided that as from February 1, 1908, elementary education, which had previously been obligatory, should be free.

(*d*) See *supra*, p. 163.



## IV. GUERNSEY. <sup>(a)</sup>

**1898 (b) Inspection of Passenger Steamers.**—This law provides that passenger steamers trading from Guernsey shall be inspected by a surveyor named by the Board of Trade periodically.

**Street Board.**—The law, originally passed in 1878, respecting the powers given to constitute the Street Board, and renewed from time to time, was continued for a further term of ten years.

**Importation of Dogs.**—Regulations as to the importation of dogs from foreign countries.

**Electric Lighting.**—This law grants a concession to Edmundson's Electricity Corporation to establish an electric lighting and power station in Guernsey.

**Harbour Dues.**—New arrangements for the levying and application of dues on goods imported into the island.

**1899 Reform of the States of Deliberation.**—By this law the States of Deliberation (the legislative assembly) are composed of the Bailiff, who has a casting vote only, the twelve Jurats, the ten Rectors of the island, the two Crown officers, fifteen delegates of parish councils (Douzaines), and nine deputies elected by the people; total, forty-eight members. Members must be British subjects. The law also contains regulations as to the elections.

**Ballot Law.**—Provides that in the election of certain public officers (States and parochial) the principle of voting by ballot shall be used.

**1900 Duty on Stone.**—A duty of  $1\frac{1}{2}d.$  per ton on all stone exported, and apportioned as to  $\frac{1}{2}d.$  to weigh-bridge dues and  $1d.$  to the general maintenance of roads.

**Compulsory Education.**—This law sanctions an Act of the States regulating compulsory primary education in the island for children above five years and under thirteen of whatever nationality.

**Militia Law.**—The attention of the States having been called to the necessity of reorganising the Royal Guernsey Militia, a Bill was adopted by the States rendering service compulsory—in time of war up to sixty years of age, and in time of peace up to forty-five years. The States vote about £5000 a year for the maintenance of the Militia.

(a) Contributed by Quertier Le Pelley, Esq., H.M.'s Greffier of the Royal Court.

(b) There is no system of numbering the laws of the island. The arrangement followed here is chronological.

In time of peace the establishment is composed of 1000 men, not including officers; in time of war, 2000.

The Militia is composed of one artillery regiment, and two battalions of infantry, and two classes of reserves. The period of active service is ten years. The annual training in camp is for eleven days. The rate pay is 2s. per day and rations. The Army Act, 1881, is in force in the island.

**Compensation Act.**—Provides that an action for damages may be maintained by the dependants of any person sustaining an accident, proving fatal, against the party by reason of whose fault or neglect such accident had occurred.

**1901 Law of Evidence.**—This law brings the law of evidence in accordance with English law.

**1902 Parochial Assemblies.**—This law separates the ecclesiastical and secular business of the parishes.

**1903 Betting Act.**—The law prohibits the establishing or keeping of an house or place for the purposes of making, proposing, accepting, or receiving bets. It contains a prohibition against making bets of any kind in any public road or place. Penalty, £5; second offence, £50.

**Education.**—Primary education was regulated by a law passed in 1893 applicable only to St. Peter Port, but extended to the whole island. Among the cardinal points of the law as enunciated by the Bailiff were—

- (1) That the State ought to continue the supreme power in matters of education.
- (2) That it is the duty of the State, through the agency of its Committee, to fix the studies and inspect the work of the pupils, and it is the province of the parochial committee to prepare the pupils for examinations which they shall be called upon to undergo in subjects of study fixed by the States committee.
- (3) That the public primary education ought not to be fettered by the ill-will of any person.

The Act of 1893 was re-enacted and extended by the law of 1903. The general supervision is entrusted to the States committee, while the parochial committee are responsible for the local administration. A sum not exceeding twopence per week may be charged for schooling. As to religious instruction, there is a provision on the lines of the Cowper-Temple clause, but with a right of entry. The law also allows the erection of distinctively denominational schools subsidised by the States.

**Stamp Duty.**—A duty is fixed on all documents and deeds and receipts, according to a lengthy tariff.



**Sale of Tobacco.**—There being a duty on tobacco, licences are required for the sale of tobacco. Three classes—£5, £1, and 5s.

**1904 Mineral and Vegetable Oils.**—A law regulates the importation and storage of mineral and vegetable oils.

**Explosives.**—A law suggested and drafted by the Chief Inspector of Explosives under the Secretary of State for the Home Department was adopted by the States. Landing and storage of explosives are under the supervision of an inspector; licences are granted by the Royal Court. Severe restrictions are made, and storage not allowed in populous districts.

**Compulsory Purchase.**—This law authorises the compulsory purchase by a public body of private property required for public purposes.

**1905 Aliens.**—Owing to the passing of the French Associations law and the consequent desire of the religious orders to seek refuge in the island, it was necessary to pass a law prohibiting the purchase of property by aliens or by foreign societies without the sanction of the Royal Court.

**Registration of Deeds.**—A law was passed to provide for the adequate registration of title.

**Post Office.**—The Postal and Telegraph Acts were made applicable to Guernsey.

**1906 Registration of Deaths.**—This law provides that burials shall not take place except by permit of the registrar, who must obtain a medical certificate of the cause of death.

**Merchant Shipping.**—Masters of steamships are required to hold the Board of Trade's certificate.

**Musical Copyright.**—This law assimilates the law to that of England.

**1907 Criminal Law.**—An amendment Act was passed upon the lines of the English Act for the protection of women and girls.

**Building.**—The law contains provisions regulating the lines for roads, buildings, etc.

The Royal Court has concurrent power of legislation with the States, but its ordinances mostly concern internal management and administration.

# NORTH AMERICA.

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## I. DOMINION OF CANADA. (a)

**1898**      Acts passed—Public, 54; Local and Private, 69.

**Boundaries.**—No. 3 rectifies the boundaries of the province of Quebec in accordance with powers conferred on the federal and provincial legislatures by the British North America Act, 1871.

**Yukon Territory.**—No. 6 (b) declares the Yukon Judicial District (already constituted by proclamation) to be a territory separate from the North-West Territories. The Governor in Council is to appoint a Commissioner as chief executive officer of the Yukon territory, and, to assist him in administration, a council of not more than six. The Commissioner in Council is given power to make Ordinances, subject to disallowance within two years by the Governor in Council. A territorial court is constituted, with the noteworthy provision (s. 17) that none but British subjects can serve as jurymen. Besides the judicial and administrative officials, every commissioned officer of the North-West Mounted Police is both a justice of the peace and a coroner.

(a) Contributed by J. A. Simon, Esq., K.C., M.P., except the year 1907.

(b) See *infra*, p. 172.



**Frozen Meat.**—No. 7 authorises a bounty not exceeding \$12,000 a year to certain steamship companies in return for providing cold storage on voyages to the United Kingdom.

**Franchise.**—No. 14 (c) repeals the previous Electoral Franchise Act, but does not affect certain provisions of the Dominion Elections Act or of the Corrupt Practices Act. S. 5 enacts that the qualifications, polling divisions, and lists of voters which are provided for provincial elections shall in every case be adopted for Dominion elections. This appears to involve slightly different regulations for different parts of the Dominion; but s. 6 excludes from Dominion elections certain special disqualifications (*e.g.* office) which may debar a person otherwise qualified from voting in a provincial election. Maintenance as an inmate in a municipal poor-house or house of industry is explicitly declared to disqualify.

**Payment of Members.**—No. 15 (d) provides that the deduction of \$8 a day shall not be made for fifteen days in the case of a member who has been absent from a sitting or committee.

**Superannuation of Civil Servants.**—No. 17 repeals existing provisions on the subject, and creates a retirement fund, formed by reserving 5 per cent. of each civil servant's income. On retirement or dismissal the amount standing to his credit, *plus* 4 per cent. interest, is to be paid over to him, while (unlike the scheme in force at Whitehall) if he dies in the service similar payment is made to his legal representatives.

**Post Office.**—No. 20 provides that upon a day to be named by the Governor-General's proclamation, the inland rate for all letters shall be two cents. per ounce, and that letters wholly unstamped shall not be forwarded at all. S. 4 makes the exception that books for the use of the blind shall be free of Canada postage.

**Insect Pests.**—No. 23 is an Act to prevent the introduction into Canada of the San José scale. The range of the Act is to be from time to time determined by the Governor in Council.

**Adulteration.**—No. 24 further amends the Adulteration Act. The unconscious seller of an adulterated article can protect himself by producing the manufacturer's warranty of genuineness and by proving that he sold the article in the same state in which he received it.

**Native Races.**—No. 34 amends the Indian Act, making Indians residing upon any reserve liable to labour on the public roads running through it, and authorising the Governor in Council to introduce the elective principle in the choice of chiefs and headmen.

**Irrigation.**—No. 35 consolidates the North-West Irrigation Acts. Rights of user of all waters are declared vested in the Crown, apart

(c) See Consolidating Act, No. 12 of 1900, *infra*, p. 174.

(d) Repealed by No. 12 of 1899, *infra*, p. 172.

from existing private rights, and the latter must be attested by licence.

**Fishing.**—No. 39 amends the Fisheries Act, s. 1 providing that all traps, nets, etc., are to be raised on Saturday night so as to allow fish a free passage on Sunday.

No. 44 compels every boat putting out from a vessel engaged in deep-sea or bank fishing to carry a compass, and also two quarts of drinking water and two pounds of solid food for each man.

**Steamboat Inspection.**—No. 46 is an elaborate code for this purpose.

**Company Law** (*e*)—Nos. 49 and 50 amend the Companies Act. By the former a mining corporation in Yukon or North-West Territories may take out a licence and thereby acquire the privileges of a free miner.

**Liquor Traffic** (No. 51).—The Prohibition Plebiscite Act regulates the attempt to gauge Canadian opinion by referendum on the question, "Are you in favour of the passing of an Act prohibiting the importation, manufacture, or sale of spirits, wine, ale, beer, cider, and all other alcoholic liquors for use as beverages?"

**Evidence.**—No. 53 amends the Canadian Evidence Act, 1893, by providing that no witness shall be excused from answering any question upon the ground that his answer may tend to criminate him, but that if he raises objections which would previously have been upheld, though he shall be compelled to answer, his reply "shall not be used or receivable in evidence against him" in any subsequent criminal proceeding against him other than a prosecution for perjury in giving such evidence.

**1899**      Acts passed—Public, 49; Local and Private, 86.

**Railways.**—No. 7 authorises the Governor in Council to grant in aid of the construction of certain lines of railway subsidies at the rate of \$3200 per mile, with the additional grant, where the average cost of construction exceeds \$15,000 per mile, of 50 per cent. of such excess. By s. 8 the subsidised companies are to credit the Government with a sum equal to 3 per cent. per annum of the amount of subsidy to go towards payment for transportation of mails, soldiers, Government supplies, etc.

No. 37 amends the Railway Act, conferring on companies certain powers of entry upon highways for the purpose of constructing and maintaining lines of telegraph or telephone. Sub-s. (d) of s. 2 runs: "The company shall not be entitled to damages on account of its poles or wires being cut by direction of the officer in charge of the fire brigade at any fire if, in the opinion of such officer, it is advisable that

(*e*) See *infra*, p. 173, and Repealing Act No. 15 of 1902, *infra*, p. 177.



such poles or wires be cut.” (f) By sub-s. (h) every workman engaged in erecting or repairing telegraph lines or instruments must wear a “badge, on which are legibly inscribed the name of the company and a number by which he can be readily identified.”

**Bounties on Steel and Iron.**—No. 8, while continuing for a further period the bounties authorised by an Act of 1897 on home-made steel and iron, provides for their gradual reduction until they are extinguished on June 30, 1907.

**Dry Docks.**—No. 9 repeals previous Statutes and re-enacts in a new form the powers of the Governor in Council to authorise in certain cases a subsidy, not exceeding 2 per cent. per annum on the cost of the work, payable for twenty years, to a company constructing a dry dock approved by the Minister of Public Works.

**Yukon Territory.**—No. 11 amends the Yukon Territory Act of the previous year (g) by introducing the principle of popular representation. All adult male British subjects who have continuously resided in the Territory for not less than twelve months are to join in electing two representatives to the Territorial Council—*i.e.* one-fourth of the whole body. These elected members hold office for two years. By s. 3 the permission of the Governor in Council is needed for the manufacture in, or importation into, the Territory of any intoxicating liquor. By s. 7 the Supreme Court of British Columbia is constituted a Court of Appeal from the Territorial Court.

**Payment of Members.**—No. 12 (h) provides that the deduction of eight dollars a day made for each day of non-attendance beyond fifteen shall not extend to the case of a Member who is an active militiaman, so far as regards “days spent on duty with his corps in a regularly organised Militia camp or in travelling between Ottawa and such camp.”

**Inspection of Grain and Hay.**—No. 25 amends the General Inspection Act, prescribing anew the various grades of wheat, Indian corn, oats, etc., and imposing a penalty of not exceeding \$500 upon every person who fraudulently uses an inspector’s certificate in connection with grain other than that for which it was given.

**Petroleum Inspection.**—No. 27 is a new Code of thirty-five sections for this purpose. By s. 7 the flash-point for petroleum intended for sale is fixed at 85° Fahrenheit. By s. 15 every refiner, importer, or salesman of petroleum or naphtha shall be responsible as to its quality. By s. 16 all petroleum and naphtha made in Canada and not intended

(f) The protection afforded by the Metropolitan Fire Brigade Act, 23 & 29 Vict. c. 90, s. 12, is less specific: cf. *Maleverer v. Spinke* (1538) (Dyer 35a, 36b).

(g) See *supra*, p. 169, and *infra*, p. 176.

(h) See *supra*, p. 170, and *infra*, p. 175.

for exportation must be inspected before leaving the manufactory, and all imported petroleum and naphtha is to be inspected at Customs ports. Ss. 22-31 prescribe penalties.

**Public Health.**—No. 30 authorises the Governor in Council to make regulations for preserving health and mitigating disease among persons employed in the construction of “public works,” including every railway canal, bridge, telegraph, and other work within the legislative authority of the Parliament of Canada.

**Protection of Navigation.**—No. 31 amends the Act respecting the protection of navigable waters by imposing a penalty on any person who allows any material or rubbish liable to sink to the bottom to be thrown into navigable waters where there are not at least eight fathoms of water if non-tidal, and twelve fathoms at low tide if tidal.

**Companies.**—No. 40 (*i*) permits directors to make a bylaw for creating and issuing any part of the capital stock as preference stock, provided that such bylaw has been unanimously sanctioned by a vote of shareholders representing two-thirds of the stock, or has been approved by the Governor in Council after three-fourths in value of the shareholders have expressed their approval.

No. 41.—This Act takes the place of existing provisions as regards the future formation, incorporation, and amalgamation of loan companies. By s. 4 any five or more adults may apply to the Governor in Council for letters patent under the Great Seal incorporating them as a “loan company”—*i.e.* a company undertaking in Canada the business of lending money on the security of, or purchasing or investing in, mortgages upon immovables and securities (other than bills of exchange and promissory notes) of public corporations, chartered banks, or Canadian incorporated companies.

**Prisons.**—No. 48 further amends the Penitentiary Act. No. 49 provides for the conditional liberation of convicts under licences to be at large, subject to periodical notification by the holders to the police.

**1900** Acts passed—Public, 48 ; Local and Private, 81.

**Canadian Volunteers in South Africa.**—No. 6 recites in its preamble that “the Government of Canada deemed it expedient to anticipate the action of Parliament by authorising the appropriation of certain sums of money for the purpose of equipping and forwarding Canadian volunteers to the seat of war,” and s. 1 ratifies the expenditure of \$850,000 and exonerates the Executive “from all liability by reason of having used or authorised the use of the above-mentioned sums of

(i) See *supra*, p. 171, and *infra*, p. 177.



money, or any portion thereof, without due legal authority." S. 2 authorises a further expenditure of \$1,150,000.

The influence of the war upon Canadian legislation may also be seen in No. 5, s. 6 (authorising bonuses to certain civil servants who have volunteered), in No. 20, s. 4 (providing for the reckoning of time spent on active service as though it were spent in residence on a home-stead for the purpose of the Dominion Lands Act), and in s. 9 of the Elections Act (*infra*).

**Subsidies.**—No. 8 authorises the granting of subsidies (which may range between \$3,200 and \$6,400 per mile according to cost) in aid of the construction of forty pieces of railway.

No. 9 authorises a subsidy for not more than ten years of not more than \$15,000 per annum for a monthly service of steamships between British Columbia and China, or Japan.

**Dominion Elections Act, 1900.**—No. 12 (*k*) consolidates and amends the law relating to elections of members of the Canadian House of Commons. S. 69 preserves the voting qualification of any person who has been absent from his electoral district by reason of military service in or outside Canada, or by reason of his "acting as a war correspondent in connection with any war in which a Canadian contingent is serving." Ss. 99–107 contain a series of stringent provisions intended to secure good order at elections. Thus, returning officers and their deputies are invested with all the powers of a justice of the peace, may arrest and imprison till the close of the poll persons disturbing the election, and may require any persons carrying weapons of offence within half a mile of the place of nomination or polling station to deliver them up. Strangers are not to enter the polling district on polling day "armed with offensive weapons of any kind, such as firearms, swords, staves, bludgeons, or the like." Flags are not to be furnished or carried, and ribbons, labels, or other favours, used as a party badge, are not to be provided or worn in an electoral district on the day of election, or *within eight days before it*. Finally, by s. 107 "no spirituous or fermented liquors or strong drinks shall be sold or given at any hotel, tavern, shop, or other place within the limits of any polling division during the whole of the polling day at an election."

**Conciliation Act, 1900.**—No. 24 is "an Act to aid in the prevention and settlement of trade disputes." S. 3 provides that conciliation boards of masters and men may be registered. S. 4 confers on the Minister to whom the carrying out the Act may be assigned powers of inquiring into the causes of any industrial dispute, and of promoting an amicable settlement by the offer of good offices. Unlike the New Zealand Act, there is no provision for *compulsory* arbitration; but on the

(*k*) See *supra*, p. 170, and *infra*, p. 179.

application of either party, the Minister may appoint "conciliators"; on the application of both, "arbitrators." Provision is made for filing memoranda of settlement, and s. 10 constitutes a "Department of Labour," which is to collect and disseminate statistical information as to conditions of labour and to issue a monthly *Labour Gazette*.

**Copyright.**—No. 25 amends the Copyright Act by providing that if the owner of a copyright subsisting in any part of the British dominions outside Canada grants a licence to reprint in Canada an edition for sale in Canada only, the Minister of Agriculture (!) may prohibit the importation into Canada of any copies of the book printed elsewhere.

**Chinese Immigration.**—No. 32 (*l*) aims at restricting Chinese immigration. By s. 6 every person of Chinese origin, irrespective of allegiance (except merchants, students, diplomatists, etc.), shall on entering Canada pay a tax of \$100. Ss. 10 and 15 throw upon conductors of railway trains and masters of vessels a personal liability for the payment of this poll-tax by the Chinese immigrants they carry.

**Live Stock Records.**—No. 33 provides for the incorporation of live stock record associations, with the object of keeping a register of pure-bred live stock of any distinct breed.

**Manitoba.**—No. 39 is an enactment of fifty-seven clauses regulating the grain trade of Manitoba.

**1901** Acts passed—Public, 43; Local and Private, 118.

**Victoria Day.**—No. 12 provides that May 24th (or when that day is a Sunday, the 25th) shall be a legal holiday throughout Canada. The Bills of Exchange Act is amended accordingly by adding this to the non-juridical days.

**Payment of Members.**—No. 14 (*m*) substitutes for the existing provision an allowance to a member of either House of \$10 for each day's attendance, if the session does not extend beyond thirty days; if it does, there is a sessional allowance of \$1500.

**Military Pensions.**—No. 17 provides for a scale of pensions for officers and men of the Permanent Militia.

**Packing and Sale of Fruit and other Produce.**—Nos. 26 and 27 are an elaborate code (*n*) for regulating the packing and marking of various Canadian products and for fixing standard weights and sizes.

**Merchant Shipping.**—No. 34 (*o*) amends existing provisions, prohibiting deck-cargoes of timber, spars, deals, etc., between October and March.

No. 35 provides for inquiries into shipping casualties.

(*l*) Repealed by No. 8 of 1903, *infra*, p. 178.

(*m*) See *supra*, p. 172, and *infra*, p. 184.

(*n*) See *infra*, p. 177.

(*o*) See *infra*, p. 181.



**Judges of Provincial Courts.**—Nos. 39 and 40 alter the salaries paid to certain of the provincial judges.

**Yukon Territory.**—No. 41 (*p*) provides for the appointment of two police magistrates by the Governor in Council for the Yukon Territory.

**Criminal Law.**—No. 42 (*q*) amends the Criminal Code by legalising raffles at charitable bazaars, and by providing that on an accusation of cattle-stealing a registered brand or mark on cattle shall be *primâ facie* evidence of the registered owner's property in the beasts.

**1902** Acts passed—Public General, 37; Local and Private, 78.

**Bills of Exchange.**—No. 2 makes a slight modification in the Bills of Exchange Act, 1890, which reproduced the Imperial Act of 1882 (*r*) with a few changes (the most notable the cutting down of the protection afforded by English law to a banker who pays a cheque on a forged endorsement to cases in which the drawer fails to give notice of the forgery for a year after he discovers it—contrast s. 24 of the Canadian Act with s. 60 of the Imperial Act). The present alteration concerns time of acceptance. S. 42 of the English Act requires a bill to be treated as dishonoured by non-acceptance, unless accepted “within the customary time” after due presentation. The corresponding section in the Dominion Act of 1890 required acceptance “on the day of presentment, or within two days thereafter,” and this section is now repealed and re-enacted in an altered form with the additional provision entitling the holder of a bill payable at sight or after sight to treat it as dishonoured by non-acceptance unless the acceptance is duly dated.

**Coasting Trade.**—No. 7 repeals No. 83 of the Revised Statutes, and enacts stringent provisions intended to prevent foreigners from sharing in the coasting trade of Canada. By s. 3 “no goods or passengers shall be carried by water, from one port of Canada to another, except in British ships”; and by s. 2 no foreign-built British ship (unless registered as a British ship before September 1, 1902) may engage in the coasting trade of Canada until provided with a licence obtainable from the Minister of Customs by payment of “a duty of 25 per cent. *ad valorem* on the fair market value of the hull, rigging, machinery, boilers, furniture, and appurtenances of such ship.”

**Expert Witnesses.**—No. 9 imposes a curious limitation upon the multiplication of expert testimony as follows:—“Where, in any trial or other proceeding, criminal or civil, it is intended by the prosecution or the defence, or by any party, to examine as witnesses professional or other experts entitled according to the law or practice to give opinion evidence (*sic*), not more than five of such witnesses may be called upon

(*p*) See *supra*, p. 172, and *infra*, p. 178.

(*q*) See *infra*, p. 183.

(*r*) 45 & 46 Vict. c. 61.

either side without the leave of the Court, or judge or person presiding, such leave to be applied for before the examination of any of the experts who may be examined without such leave."

**Marking of Fruit.**—The elaborate code contained in the Fruit Marks Act, 1901, (s) already needs amendment, and by No. 12 not only has every closed package of fruit to be stamped by the packer with a mark indicating whether it is of first, second, or third quality, but the time-honoured practice of "putting the biggest apples at the top" is to be suppressed by an inspector armed with power to stamp the legend "Falsely Packed," "in a plain and indelible manner on the package."

**Game Preservation.**—No. 12 prohibits the hunting of buffalo and bison in the unorganised territories till 1907, and appoints the members of the North-West Mounted Police Force to be *ex officio* gamekeepers to enforce the observance of this close-time.

**Immigration.**—No. 14 (t) adds to the existing Immigration Act a section prohibiting the landing in Canada of any person suffering from any loathsome, dangerous, or infectious disease.

**Joint Stock Companies.**—No. 15 (u) is an important new code of company law, containing ninety sections and a schedule of forms. By s. 5 the Secretary of State may by letters patent grant a charter of incorporation to any number of persons not less than five for any purpose within the legislative authority of the Dominion Parliament, *except* the business of railway, telegraph, telephone, banking, insurance, or loan companies. The liability of shareholders is limited to the amount unpaid on their shares, but (by s. 31) to this extent each shareholder is individually liable to the creditors of the company, and he may be sued by any creditor whose debt remains unsatisfied after execution against the company. There appear to be no provisions for winding-up, but the charter is forfeited by three years of non-user (s. 19). The directors are to be not more than fifteen or less than three in number (s. 60). If directors declare a dividend when the company is insolvent, they become liable for the debts of the company (s. 69). They are jointly and severally liable for six months' wages to the company's servants whose execution against the company is returned unsatisfied (s. 71). The minimum subscription is 10 per cent. of the authorised capital (s. 18). Existing companies, whether Canadian, British, or foreign, may avail themselves of the Act (ss. 11-13).

**Medicine.**—No. 20 provides for the establishment of a Medical Council in Canada, with disciplinary and educational functions, so that there may be one standard of medical qualification maintained throughout the Dominion.

(s) See *supra*, p. 175, and *infra*, p. 185.

(t) Repealed by No. 19 of 1906, *infra*, p. 185.

(u) See *supra*, pp. 171, 173.



**Penalties.**—No. 26 empowers the Governor in Council to remit any pecuniary penalty, fine, or forfeiture imposed by any Canadian Act.

**National Park.**—No. 31 enlarges the boundaries of the national park which was established in the North-West Territories by the Rocky Mountains Park Act, 1887.

**Customs Tariff.**—No. 33 amends the Customs Tariff, 1897, by adding to Schedule B rifle-making machinery and materials and charcoal-making machinery.

**Yukon Territory.**—Nos. 34–37 (*x*) modify existing constitutional arrangements for the Yukon Territory, which has now sufficiently developed to become an electoral district and to return one member to the Dominion House of Commons (the Yukon Territory Representation Act, 1902, No. 37).

**1903** Acts passed—General, 74; Local and Private, 132.

**Butter.**—No. 6 prohibits altogether the manufacture, importation, or sale of oleomargarine or other substitute for butter made from any fat other than that of milk or cream.

**Chinese Immigration.**—No. 8 repeals the Statutes of 1900 (*y*) and 1902, (*z*) and lays down anew elaborate restrictions on Chinese immigration. Every immigrant of Chinese origin, irrespective of allegiance, is to pay a tax of \$500 at the port of entry. There are exceptions in favour of diplomatic representatives, merchants, tourists, and students, amongst others. No vessel bringing Chinese immigrants to Canada may carry more than one such immigrant for every 50 tons of her gross tonnage, and no immigrant may be landed until a permit is obtained. Masters of vessels and conductors of trains are made personally liable for the payment of the tax by any Chinese they carry. The fear of Chinese secret societies is emphasised by s. 20, which makes it an indictable offence to take part in the organisation of any sort of court or tribunal composed of Chinese persons for the hearing and determination of any offence committed by a Chinese person or to carry on such organisation or give evidence before it; but nothing is to prevent Chinese persons from submitting any disputes to arbitration.

**Civil Service** (Nos. 9 and 10).—This amends the Civil Service Act principally in the matter of salaries, the selection of officers requiring special qualifications, and superannuation allowances.

**Contagious Diseases (Animals)** (No. 11).—Every owner of animals, breeder, or dealer on observing symptoms of infectious or contagious disease—(defined s. 2)—among his animals is to give immediate notice to the Minister of Agriculture and to the nearest veterinary inspector of

(*x*) See *supra*, pp. 169, 172, 176.

(*y*) See *supra*, p. 175.

(*z*) See *supra*, p. 177.

the Department of Agriculture. The same duty of giving notice is imposed on any veterinary surgeon practising in Canada.

An owner neglecting to give notice forfeits his claim to compensation for any animals slaughtered. Any person turning out and grazing any diseased animal in any forest, moor, common, open field, waste land, or other unenclosed land is liable to a penalty of \$200. A similar penalty is imposed on persons selling diseased animals or throwing their carcasses into rivers. Any suspected animal exposed at a fair may be seized. The Minister of Agriculture may order any diseased animals to be slaughtered and compensation at the rate of one-third of the value of the animal before it became affected.

The importation into Canada or any of its ports of diseased animals may be prohibited, inspectors appointed, areas of infection defined, vessels cleansed, and animals quarantined.

**Elections.**—No. 12 amends the Dominion Controverted Elections Act by giving the judge at the trial power to adjourn it and to compel the attendance of witnesses.

**Immoral Plays** (No. 13).—Any lessee or manager of a theatre who presents an immoral, indecent, or obscene play, opera, concert, acrobatic, variety, or vaudeville performance is made guilty of an indictable offence and liable to a year's imprisonment. Any actor taking part in such a piece is liable to three months' imprisonment. Appearing in an indecent costume may be visited with six months' imprisonment. "Theatre" includes "any place open to the public, gratuitously or otherwise, where dramatic, musical, acrobatic, or other entertainments or representations are presented or given."

**Customs** (No. 14).—This re-constitutes the Board of Customs and amends the Customs Act in a number of matters of detail.

**Customs Tariff** (No. 15).—By this, articles which are the growth, produce, or manufacture of any foreign country which treats imports from Canada less favourably than those from other countries may be subject to a surtax over and above the duties specified in Schedule A to the Customs Act, such surtax in every case to be one-third of the duty specified in the schedule.

**Elections** (No. 19). (a)—More stringent legislation was, it seems, necessary to prevent interference with the freedom of the voter. This Act re-defines in wider terms the offence of undue influence. Force, violence, or restraint, threats of injury or loss, intimidation, compelling or inducing voters by abduction, duress, or false pretence to refrain from voting are made indictable offences.

**Railways.**—No. 21 (b) empowers the Exchequer Court of Canada to make an order for the sale of any insolvent railway subject to the

(a) See *supra*, p. 174.

(b) See *infra*, p. 181.



legislative authority of the Parliament of Canada at the instance of the Minister of Railways and Canals or for sale or foreclosure at the instance of a creditor holding a lien or charge. "Insolvent" is defined in ss. 5, 6, and 7 of the Winding-up Act.

**Expropriation** (No. 22).—Any land taken for a public work and found to be unnecessary may be abandoned, and will then revert in the person from whom it was taken. Such revert is to be taken into account in estimating the compensation. Alterations of or additions to public work may be ordered where it will remove the injury to any land injuriously affected.

**Fisheries** (No. 23).—The use of rockets and explosive projectiles for killing fish or marine animals other than porpoises, whales, and walruses is forbidden; also the use of purse seines for the capture of fish except in certain waters in British Columbia by special fishery licence.

**Grain.**—No. 24 amends the General Inspection Act by providing for the appointment for certain districts of an official weighmaster to have control of the weighing of grain received into or shipped out from public terminal elevators. "Worm-eaten" pease are to include "buggy" pease.

**Judges' Salaries** (c) (Nos. 27, 28, 29).—The first two of these Acts fix respectively the salaries of the judges of the Supreme Court of the Province of Ontario and of the Court of King's Bench and Superior Court of the Province of Quebec. They range from \$6000 to \$3500.

The third provides for pensions for judges of the Supreme Exchequer and Superior Courts and for county court judges, disabled by infirmity after thirty-five years' service.

**Lead Mining.**—No. 31 provides for payment of bounties on lead in lead-bearing ores mined in Canada.

**Shipping.**—No. 34 defines for the purposes of masters' and mates' certificates the expressions "sea-going ship" and "coasting voyage."

**Naturalisation** (No. 38).—This amends the Naturalisation Act by prescribing to what Court in the respective provinces the certificate is to be presented. Due notice must be given and presentation to be made in open Court.

**Dominion Notes** (No. 43).—These are to be a legal tender in every part of Canada except at the offices at which they are redeemable.

**Patents** (No. 46).—The object of the Patent Law is the encouragement of the trade and industries of the country. To secure that this end shall not be defeated the present Act provides that a patent, and all the rights and privileges thereby granted, is to cease and determine at the end of two years from the date of it unless the patentee commences and

(c) See *infra*, p. 184.

continuously carries on in Canada the construction or manufacture of the invention patented in such manner that any person desiring to use it may obtain it or cause it to be made for him at a reasonable price at some manufactory or establishment in Canada. By an alternative provision, if the patentee is guilty of neglect the Commissioner of Patents may grant a licence to other persons to work it.

**Penny Banks** (No. 47).—The Governor in Council may grant a charter of incorporation to any five persons for the purpose of carrying on a bank of this kind. A guarantee fund (defined s. 28) must be established before the bank can begin business. Interest is not to exceed one-half of 1 per cent. in advance of the rate payable to depositors in Government or Post Office Savings Banks. S. 29 defines the securities in which the funds may be invested. A general meeting of the members is to be held once a year. Statements of the condition and business of the bank are to be sent to the Minister of Finance and Receiver-General every half-year.

**Railway Labour Disputes** (No. 53).—This empowers the Minister of Labour whenever a dispute arises between railway employers and employees which threatens a lock-out or strike to establish a Committee of Conciliation to mediate. If this is ineffectual, the Minister may refer the difference to arbitration under the Act, in which case the findings of a majority of the Board are to settle the matter. The machinery for conducting the arbitration is furnished by the Act.

**Railways** (No. 58). (*d*)—This is the most important legislative achievement of the year. It is a complete code in 311 sections dealing with the constitution and duties of the Railway Commission, the incorporation and organisation of the railway company, the construction of railways, their inspection and operation, bylaws, tolls, offences, and penalties. It is an admirable piece of work and sums up all the experience which the last sixty years or more has supplied on this subject.

**Revised Statutes** (No. 61).—The consolidation of the Revised Statutes of Canada is proceeding. This is to provide for the incorporation of the recent public general Statutes.

**Ships and Shipping** (No. 63). (*e*)—Certain deck loading is prohibited in winter.

**Shipping Casualties** (No. 64).—A Court is appointed to investigate shipping casualties and alleged incompetency or misconduct by masters, mates, or engineers.

**Steamboat Inspection** (Nos. 66, 67).—Certain vessels are exempted from inspection where oil is used as fuel; a fire test is to be applied.

(*d*) See *infra*, p. 182.

(*e*) See *supra*, p. 175, and *infra*, p. 188.



**1904** Acts passed—Public General, 42 ; Local and Private, 100.

**Inspection of Grain.**—No. 15 is an Act of ninety-three sections providing for the inspection and grading of grain by Government officials.

**Militia.**—No. 23 is the longest and most important Act of the year, and is entitled “An Act respecting the Militia and Defence of Canada.” It repeals Acts of 1898 and 1900 dealing with the subject, and establishes (s. 5) a Minister of Militia and Defence, who is made responsible for the administration of Militia affairs and of fortifications, ordnance, ammunition, arms, armouries, stores, munitions, and habiliments of war belonging to Canada, including the initiative in all matters involving the expenditure of money. By s. 11 all the male inhabitants of Canada, of the age of eighteen and upwards and under sixty, not exempt or disqualified by law, and being British subjects, are liable to serve in the Militia ; and the Governor-General may require all the male inhabitants of Canada, capable of bearing arms, to serve in the case of a *levée en masse*. S. 12 exempts certain classes of persons—*e.g.* judges, clergymen, telegraph and revenue clerks, prison warders, pilots, “the only son of a widow, being her only support,” and “persons who, from the doctrines of their religion, are averse to bearing arms or rendering personal military service.” S. 15 divides those liable to serve into four classes: (1) those between eighteen and thirty who are unmarried, or widowers without children ; (2) those between thirty and forty-five who are unmarried, or widowers without children ; (3) those between eighteen and forty-five who are married, or widowers with children ; (4) those between forty-five and sixty ; and provides that the male population shall be called on to serve in this order. The period of service in time of peace for the active Militia (corps raised by voluntary enlistment or ballot) is three years (s. 17). The permanent force is to consist of such permanently embodied corps, not exceeding 2000 men, enrolled for continuous service, as are from time to time authorised by the Governor in Council (s. 24). If enough men do not volunteer, the quota is made up by ballot, but not more than one son from the same family household is liable to be chosen (s. 27). Subsequent sections deal with the appointment of officers, with arms and equipment, with pay and allowances, rifle ranges, rifle clubs and cadet corps billeting, transport, courts-martial, and with the calling out of the Militia to aid the civil power in the event of disturbances.

**Bounties.**—No. 28 provides for the payment of bounties of 1½ per cent. per imperial gallon on crude petroleum produced from wells in Canada.

**Railway Companies' Liability to their Servants.**—No. 31 (*f*) enacts

(*f*) See *supra*, p. 181.

that no railway company within the jurisdiction or legislative control of the Dominion Parliament shall be relieved from liability for damages for personal injury to any servant of the company by reason of any notice, condition, rule, bylaw, release, or contribution to benefit funds—in other words, that no railway company is to contract out of its liability to its servants for personal injury. S. 2 of the Act provides that the question whether the Dominion Parliament is competent to enact this law is to be referred by the Governor in Council to the Supreme Court of Canada for its decision, and is to come into force only after its validity has thus been determined.

**1905**

Public Acts, 49 ; Local and Personal, 128.

**New Provinces.**—Nos. 3 and 42 are similar in terms. They define the areas of the new provinces of Alberta and Saskatchewan formed from the North-West Territories, and make provision for their government in accordance with the Canadian Constitution.

**Census and Statistics** (No. 5).—A permanent office is created under the Minister of Agriculture, to be called the Census and Statistics Office, with a chief officer and staff. A census of Canada is to be taken on a day in June of the year 1911 and thenceforward every tenth year. The census is to ascertain—(1) The population—name, age, sex, colour, social condition, nationality, race, education, religion, occupation; (2) The houses for habitation, stores, warehouses, factories, and other buildings; (3) The occupied land—value and condition, fallow, forest—unbroken prairies, marsh, waste land, etc.; (4) The products of factories, farms, fisheries, forests, and mines; (5) The wage-earnings of the people within the census year; (6) The municipal, educational, charitable, penal, and other institutions; (7) Any matters specified in instructions.

Every enumerator is to ascertain by house-visiting and careful inquiry the required information with the utmost accuracy.

Besides the decennial census, the officer is to collect and tabulate agricultural, commercial, criminal, educational, vital, and other statistics and information from time to time.

Judges' clerks are to fill up schedules for criminal statistics, wardens of penitentiaries and reformatories, and sheriffs.

**Contracts for Government Works** (No. 7).—Whenever any work is to be constructed by contract, under the direction of any department of the Government, the Minister of the department is to invite tenders by public advertisement, except in cases of pressing emergency, and the tenders submitted to the Governor in Council.

**Criminal Law** (No. 9). (*g*)—This amends the Criminal Code of 1892

(*g*) See *supra*, p. 176, and *infra*, p. 184.



by defining "trading stamps." A trading stamp includes any form of cash receipt, receipt, coupon, premium ticket, or other device to be given to the purchaser of goods by the vendor, and representing a discount on the prices of such goods, or a premium to the purchaser which is redeemable. It is made an indictable offence to issue or sell "trading stamps" to a merchant or dealer in goods for use in his business.

**False Representations to Deter Immigrants** (No. 16).—Every person who does, in Canada, anything for the purpose of causing or procuring the publication or circulation by advertisement, or otherwise, in a country outside of Canada, of false representations as to the opportunities for employment in Canada or as to the state of the labour market in Canada intended to encourage or induce, or to deter or prevent the immigration into Canada of persons resident in that country is guilty of an offence and liable to a fine of \$1000.

**Naturalisation of Aliens** (No. 25).—This amends the procedure for obtaining naturalisation in the North-West Territories.

**Salaries of Judges** (No. 31). (*h*).—These salaries range, for the most part, from \$6000 to \$8000 a year.

**Inspection and Sale of Seeds** (No. 41).—No one is to sell or offer, or have in his possession for the purpose of selling, any seeds of cereals, clovers, or forage plants unless they are free from any seeds of the following weeds:—wild mustard, wild oats, bindweed, purple cockle, etc., unless every package is marked with the name of the seller, the kind of seed, and the common name of the aforementioned weeds. There are a number of very special provisions as to other kinds of seeds.

**Payment of Members** (No. 43). (*i*).—Each member of the Senate and House of Commons is to be allowed \$20 for each day's attendance, if the session does not extend beyond thirty. If it extends beyond that there is to be a sessional allowance of \$2500, and no more.

**Inspection of Water Meters** (No. 48).—This fixes the standard measure for water, and provides for the stamping of meters by the Inland Revenue Department.

**Wireless Telegraphy** (No. 49).—This is an Act for its regulation.

**1906** Acts passed—185: Public, 52; Local and Personal, 133.

**Criminal Law** (No. 5). (*k*).—The judge of any superior or county court is empowered to appoint a commissioner or commissioners to take the evidence of any person residing out of Canada relating to an offence for which a prosecution is pending; but the assent of the Attorney-General to such appointment must be obtained.

**Evidence of Accused** (No. 10).—The principle of allowing prisoners

(*h*) See *supra*, p. 180.

(*i*) See *supra*, p. 175.

(*k*) See *supra*, p. 183.

to give evidence on their own behalf here receives recognition. "Every person charged with an offence and, except as hereinafter provided, the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence." The exceptions protect communications made by husband to wife, or wife to husband during marriage.

**Forest Reserves** (No. 14).—The object of this Act, as the preamble states, is to create reserves in Manitoba, Saskatchewan, Alberta, and British Columbia in order to protect and improve the forests and secure a permanent supply of timber and also to protect the animals, fish, and birds within the boundaries of such reserves. The reserves are to be known as the Dominion Forest Reserves, and are placed under the control of the Superintendent of Forestry and rangers. The Schedule to the Act specifies the reserves thus set apart in the various provinces and defines the boundaries.

**Fruit Marks** (No. 15). (*l*)—Every person packing fruit in a closed package intended for sale is to cause the package to be marked in a plain and indelible manner, in letters not less than half an inch long, (i.) his name and address, (ii.) the name of the variety or varieties, (iii.) a description of the grade of the fruit, which is to include one of the following four marks, viz. "Fancy," "No. 1," "No. 2," "No. 3." No one is to use any of these descriptions unless the fruit conforms in quality, etc., to the standard defined in each case by the Act.

**Gold and Silver Marking** (No. 17).—No article composed in whole or in part of gold or of silver, or of any alloy of gold or of silver, is to be made or sold or imported into Canada if it bears any other than a trade mark, a date mark, and a quality mark—that is, a mark truly and correctly indicating, as required by the Act, the quality of the gold or silver, or alloy of gold or of silver used in the making of the article.

Dealers selling or importing articles purporting to be of gold, but marked to be of less than ten carats in fineness, are to be guilty of an indictable offence. There is a similar provision as to silver articles containing less than  $\frac{925}{1000}$  of the pure metal.

Plated articles must show the proportion of gold, silver, or other metal with which they are overlaid. Any dealer selling or importing electro-silver-plated articles bearing a false mark is to be guilty of an indictable offence.

**Immigration** (No. 19). (*m*)—This is an Act regulating, with considerable strictness, immigration into the Dominion with a view to the exclusion of the unfit. It empowers the Governor in Council to establish immigration offices in and outside Canada, and to appoint a superintendent of immigration, immigration agents, medical and other officers.

(*l*) See *supra*, p. 177.

(*m*) See *supra*, p. 177.



No vessel is to enter Canadian waters having on board any greater number of passengers than one adult passenger for every fifteen clear superficial feet of deck or one for every two tons of tonnage.

The master of any vessel is to deliver to the immigration agent at the port of arrival a report of the passengers on board on a prescribed form, and, in particular, the name and age of any who are lunatic, idiotic, epileptic, deaf and dumb, or dumb, blind, or infirm, or suffering from any disease or injury.

Immigrants so reported are not to be allowed to land except in the case of blind, deaf, and infirm, where they are part of a family who can give security for their permanent support. Paupers, professional beggars, vagrants, and persons likely to become a public charge, convicts, prostitutes, and procuresses are also prohibited. The immigration agent, the medical officer, and another officer appointed by the Minister, are constituted a board of inquiry to determine the admissibility of immigrants. Prohibited immigrants who have arrived by train must be deported by the railway company. Any immigrant who has within two years of his landing committed a crime involving moral turpitude or become an inmate of a gaol, hospital, or charitable institution, may be deported.

Another feature of the Act is the protection of immigrants. The master of the vessel is to land the immigrants at an hour and place fixed by the immigration agent. Shelter and accommodation are to be provided for them until they can be forwarded to their destination. The immigrants are not to be consulted or solicited by any persons other than those licensed for the purposes. "Runners" and agents for railway and steamboat companies or hotels are not to board the vessel. Taverns, hotels, and boarding-houses are to exhibit, conspicuously, their tariff of prices. All the provisions of the Act are fortified with heavy penalties.

**Interpretation** (No. 21).—Some rules are laid down as to the commencement of Acts, the mode of citation, the application of definitions, and the construction of an amending Act with the Act it amends.

**Leprosy** (No. 24).—Every person in Canada found to be afflicted with leprosy may be confined in a lazaretto for lepers; and for the care of such patients the Governor in Council is empowered to establish a lazaretto with a medical superintendent under the direction of the Minister of Agriculture. Persons suspected of having leprosy may be examined by the medical officer, and if reported as requiring confinement, they may, on warrant issued by a judge, be committed to a lazaretto. Harboursing or concealing a leper is made an offence punishable with a fine of \$100. The inmates of a lazaretto are to be detained there until the medical superintendent certifies that it is safe for them to be at large.

**The Lord's Day (No. 27).**—This is a remarkable Act. To some it will appear a recrudescence of Puritanism; to others a sound State policy against the spread of the "Continental" Sunday. All buying and selling, all exercise by a man of his ordinary vocation or business, either by himself or by his employees, on the Lord's Day, that is, "the period of time which begins at twelve o'clock on Saturday afternoon and ends at twelve o'clock on the following afternoon," is made unlawful, subject to an exception in the case of works of "necessity or mercy." Of these the Act gives a number of illustrations, but they are not to be deemed exhaustive; thus, work may be done in connection with divine service, the sale of drugs and medicines, telegraph and telephone messages, starting and maintaining fires, ventilating and pumping mines, keeping railway tracks clear of snow, loading or unloading any ocean-going steamer, the delivery of milk for domestic use, the work of domestic servants and workmen.

It is to be unlawful for any person to engage in any public game or contest for gain, or to be present at any performance or public meeting, elsewhere than in a church, at which any fee is charged for admission. It is further made unlawful for any person on the Lord's Day to run any excursion for hire, or to shoot with any gun or rifle for gain, or in such manner as to disturb other persons in attendance at public worship. Foreign newspapers are not to be sold. The violation of any of the provisions of the Act is visited with a fine of \$40.

**Money-lenders (No. 32).**—No money-lender is to stipulate for more than 12 per cent. interest on any loan under \$500; after judgment the rate is to be reduced to 5 per cent. The Court is given power to inquire into and re-open transactions and relieve the borrower from any interest in excess of the above rate. Any money-lender violating the Act is liable to imprisonment for a year.

**Penitentiaries (No. 38).**—By this Act all the penitentiaries in Canada, and all prisoners therein, are brought under the control of the Minister of Justice, who is to exercise over them complete administrative power. Other penitentiaries or prisons may from time to time be established by the Governor in Council. The Governor in Council is further empowered to appoint two inspectors of penitentiaries and such other prisons, to visit, examine, and report upon their state and management. He may also appoint wardens and deputy-wardens for penitentiaries, fix salaries, and allot gratuities.

Juvenile offenders in reformatories found incorrigible may be removed to a penitentiary.

Convicts are to be kept at hard labour for ten hours a day at least exclusive of hours for meals. Female convicts are to be kept in a separate ward, under charge of a matron. A record is to be kept of the



daily conduct of every convict, his industry and obedience to prison rules, and by such conduct, if exemplary, the convict may earn a partial remission of his sentence not exceeding six days for every month of good behaviour credited to him. A convict with twenty-two days' remission to his credit may earn remission at the rate of ten days per month. A list of prison offences is to be drawn up by the inspector, and a copy placed in each cell. Convicts are not, unless at their own request, to be discharged during the months of December, January, and February, but may stay on. At discharge the ex-convict is to be supplied with a suit of ordinary clothes, the means of transportation to the place where he was convicted, or any other place he may select, and a sum of money not exceeding \$10. Justice and mercy seem happily met together in this Act.

**Mining** (No. 39).—This is a technical Act, regulating “placer” mining in the Yukon territory—the right to acquire mines, the nature and size of claims, locating and recording, survey, title, grouping, water rights, drainage, etc.

**Railway** (No. 42).—The important Railway Act of 1903<sup>(n)</sup> is here amended and supplemented. The Act deals with the jurisdiction of the Railway Board, their power to regulate the construction of rolling stock, railway accommodation, and the running of trains, connections, “express” tolls, telephone tolls, and other incidents of railway traffic. No. 43 authorises the granting of subsidies in aid of the construction of certain railways.

**Shipping** (No. 46).<sup>(o)</sup>—With a view to the safety of ships and the prevention of accidents, masters of sailing and steam ships are forbidden during the winter months, and for certain voyages, to load deck cargoes of timber of certain kinds.

**Senate and House of Commons** (Nos. 48, 49).—A deduction of \$15 a day from a member's sessional allowance is made for non-attendance, except in cases of illness. A member is also to be allowed his actual moving or transportation expenses and reasonable living expenses between his place of residence and Ottawa. Each member is to furnish the Clerk of the House with a statement of attendances, rendered monthly, and of his travelling expenses. No member of the Senate or House of Commons is, under peril of a penalty of \$1000 and \$500 respectively, to accept any compensation for services rendered or to be rendered to any person in relation to any Bill, proceeding, contract, claim, or other matter before the Senate or House of Commons or a Committee of either House, or in order to influence any member of either House.

**Weights and Measures** (No. 52).—When milk is sold by measure,

<sup>(n)</sup> See *supra*, p. 179.

<sup>(o)</sup> See *supra*, p. 181.

all cans or other vessels of a capacity of one gallon or over used for such sale are to contain one Dominion standard gallon or some multiple of such gallon. The capacity of the can and the name of the maker are to be stamped on it by inspectors, who are to be paid certain fees. Cans in use are to be verified and stamped to the amount of their capacity.

**1907** (*p*) Acts passed—142: Public, 54; Local and Personal, 88.

**Cold Storage.**—An Act of 1897 is repealed and provision made afresh by No. 6 for Government subsidies to encourage the establishment of cold storage warehouses for the preservation of perishable food products.

**Customs.**—No. 11 embodies a British Preferential Tariff applicable to the United Kingdom and the greater part of the British Empire—the chief exception being the Australian States. A second schedule of rates known as the “Intermediate Tariff” is applicable to the countries to which it is extended; and a third scale, the General Tariff, applies to all goods not admitted under either of the other tariffs. The Act probably gives the first direct statutory recognition to the practice of “dumping” by enforcing a dumping duty upon goods sold to an importer in Canada at a price less than the fair market value of the same article when sold for home consumption in the country of exportation.

**Electricity.**—The object of No. 14 is to secure the satisfactory supply of electricity under suitable conditions. The inspectors concerned with the administration of the Act work under the direction of the Department of Inland Revenue. The Act re-enacts with amendments earlier legislation. By No. 16 the exportation of electricity is regulated and a duty authorised not exceeding \$10 per annum per horse-power.

**Immigration.**—An amendment to the Immigration Acts by No. 19 requires that any immigrant becoming a public charge or criminal within two years of his landing may be deported, and must be carried by the same shipping company which brought him.

**Investigation of Industrial Disputes.**—With a view to the promotion of settlement of strikes and lock-outs in mines and industries connected with public utilities, No. 20 establishes Boards of Conciliation and Investigation. The appointment of the Board rests with the Minister of Labour. It is to consist of three members, of whom one shall represent the employers, the second the employees, and the third be chosen by the other two, or, failing them, by the Minister. The third member shall be chairman. The members of the Board are paid even



for the time occupied in selecting the third member. The Act lays down in much detail the procedure to be followed, even stating that "the Board may, at any time, dismiss any matter referred to it which it thinks frivolous or trivial." The Board can compel the attendance of witnesses and production of documents. Strikes or lock-outs prior to or pending the reference to the Board are declared to be illegal.

**Railway Employees Provident Fund.**—In conjunction with Prince Edward Island a provident fund is constituted by No. 22 for railway employees and assisted by a Government grant.

**Bounties.**—No. 24 authorises the payment of various bounties on iron and steel made in Canada.

**Meats and Canned Foods.**—Provision is made by No. 27 for the inspection of meat and the adequate marking of canned goods in order to secure that nothing unwholesome leaves the country.

**Department of Mines.**—Previous legislation is repealed by No. 29 and the creation of a Department of Mines enacted, together with a Geological Survey and a Museum of Geology and Natural History.

**Naturalisation.**—No. 31 amends the Naturalisation Act so as to provide for the naturalisation of persons naturalised in other parts of the empire.

**Constitution.**—The rearrangement of representation in the House of Commons, rendered necessary by the census of 1906, is made by No. 41. The House of Commons is to consist of 221 members, distributed as follows:—Ontario, 86; Quebec, 65; Nova Scotia, 18; New Brunswick, 13; Manitoba, 10; British Columbia, 7; Prince Edward Island, 4; Saskatchewan, 10; Alberta, 7; and Yukon Territory, 1.

**Revised Statutes.**—The Revised Statutes of 1906 are declared to be in force by No. 43, and the Governor in Council authorised to make arrangements for the preparation of a French edition.

**Treaty with Japan.**—No. 50 sanctions the Convention made on July 12, 1906, between the United Kingdom and Japan respecting commercial relations with Canada.

## 1. ALBERTA. (a)

The province was formed from the North-West Territories, and proclaimed to be part of the Dominion on September 1, 1905, and the Legislative Assembly opened its first session on March 15, 1906.

(a) Contributed by C. E. A. Bedwell, Esq.

1906

Acts passed—76.

**Interpretation of Statutes.**—No. 3 is an Act upon the lines of the English Interpretation Act, 1889.<sup>(a<sup>1</sup>)</sup>

**Public Service.**—The conditions of the public service are embodied in No. 4.

The Clerk of the Legislative Assembly shall hold office during pleasure, but whenever such pleasure is exercised in the direction of removing him a statement of the reasons for so doing shall be laid on the table of the Legislative Assembly within the first fifteen days of the next following session.

Every employee entering the public service is subject to a six months' probation.

S. 25. Unless otherwise ordered by the Lieutenant-Governor in Council, no allowance or compensation shall be made for any extra service whatsoever which any clerk or employee may be required to perform.

S. 27. Any application for increase of salary made by any employee in the public service or by any other person on his behalf with such employee's consent or knowledge shall be considered as a tendering of the resignation of such employee.

**Treasury Department.**—Any member of the Executive Council may be appointed to act as provincial treasurer at the head of the department organised by No. 5. A Treasury Board is appointed to audit the funds of the department. Any member may apply on its behalf to the Supreme Court to compel the attendance of witnesses or the production of documents. The Act also provides for dealing with defaulting officials.

For the complete examination of the public accounts and for reporting thereon to the Legislative Assembly the Lieutenant-Governor in Council may appoint a provincial auditor. Should any difference arise between the auditor of any department respecting the appropriations to which any authorised expenditure should be charged such difference may be referred by the latter to the Treasury Board to determine the matter.

**Attorney-General.**—By No. 6 the Attorney-General is called upon to fulfil the duties which fall to the Solicitor-General as well as the Attorney-General in England. Among other duties, in addition to those usually associated with the Law Officers of the Crown, he has also—

The supervision of the administration of the law governing the sale of intoxicating liquor.

Arranging the sittings of the Courts of Justice in the Province and regulating the work of official Court reporters.

(a<sup>1</sup>) 52 & 53 Vict. c. 63.



The examination of papers in connection with the admission and discharge of lunatics to and from asylums. .

**Provincial Secretary.**—The duties of this officer are set forth in No. 7, and are to accord with those which are assigned by law or custom to Provincial Secretaries and Registrars in other Provinces of the Dominion.

**Department of Agriculture.**—Everything relating to agriculture, statistics, and the public health, including hospitals, is assigned by No. 8 to this department. Persons failing to answer promptly the inquiries of the department so as to afford information of which it is in need are liable to a penalty of \$25 on summary conviction before a justice of the peace.

**Government Printer.**—The establishment of this department and the publication of the *Government Gazette* is the subject-matter of No. 9.

**Public Works.**—A department to have “the management, charge, and direction of the construction, heating, lighting, furnishing, maintenance, and keeping in repair of all Government buildings” is constituted by No. 10. Government property of either land or buildings in the province may be placed in the charge of the department. The work of surveying under the direction of the Dominion Lands Surveyor also comes within its province. The Minister of Public Works may establish and maintain public ferries or grant licences for private ferries. The extent of detail into which the Act enters is illustrated in the following section :—

In case the water in any stream, river, or other body of water in respect of which the licence for the operation of a ferry has been issued becomes too shallow to permit of such ferry being operated, the licensee shall provide and keep a small boat or canoe with which he shall transfer foot passengers and their baggage across such stream, river, or other body of water, and for such service the licensee shall be allowed to charge the fees prescribed in his licence for like service by means of the ferry.

In view of the fact that bridges are provided by the department, obstruction and the regulation of heavy traffic are dealt with in the Act under the title of the protection of public works.

**Magistrates.**—All previous commissions to act as magistrates or justices of the peace are revoked by No. 13. Persons to be appointed must have practised for three years as advocate or solicitor in Canada and must be British subjects. No practising advocate can be a justice of the peace, but police magistrates are specially excepted from the provision.

**Commissioners of Oaths.**—Commissions previously granted are declared to be valid. All duly enrolled advocates of the former North-

West Territories residing in the province shall be commissioners for taking affidavits in the province under the authority of No. 14.

**Coroners.**—Coroners previously acting in the province are continued by No. 15. Particulars relating to inquests are to be forwarded to the Attorney-General.

**Notaries Public.**—Commissions issued to advocates of the North-West Territories expire on December 31, 1908, unless previously revoked. New appointments may be made by the Lieutenant-Governor in Council.

**Sheriff.**—No. 17 is chiefly concerned with the security to be given by the deputy-sheriff and the safeguarding of the administration of the office.

**Petition of Right.**—This form of relief is secured to the inhabitants of the new province by No. 20.

**Mechanics' Lien.**—Mechanics and other workers are entitled to a lien on employers' property for work done under authority of No. 21. The lien expires in thirty-one days after the completion of the work unless registered in the Land Titles Office.

**Dentists.**—An association is constituted by No. 22 in order to secure a standard of qualification for dentists and the usual advantages derived from incorporation.

**Steam Boilers.**—No. 23 requires the inspection of steam boilers at least once in every year. Persons in charge of them are required to hold certificates of qualification. "No engineer in charge of a plant shall absent himself from duty in connection therewith while the plant is in operation for more than thirty minutes at a time."

**Land Registration.**—The province is divided into two districts in order to carry on the system already in force. No. 24 requires, *inter alia*, that registrars to be appointed hereafter shall be barristers, solicitors or advocates of at least three years' standing without prejudice to the right of existing officers.

**Coal Mines.**—Boys employed under the age of sixteen must possess a qualifying educational certificate. "No boy under the age of twelve years, nor any woman or girl of any age, shall be employed in the workings of any mine." These provisions are contained in No. 25, which regulates generally the management of coal mines. A board of examiners is created to grant certificates of competency to managers, pit bosses, and fire bosses. A code of general rules for observance in every mine is contained in the Act.

**Motors.**—No. 26 for regulating the speed of motor vehicles, follows the lines of English legislation.

**Medical Profession.**—A college of physicians and surgeons, with the usual powers, is constituted by No. 28.



**Telephone.**—Municipalities are authorised by No. 31 to establish and maintain systems of telephone.

**Sugar.**—\$250,000 is set apart by No. 37 for the encouragement of the sugar beet industry in the province.

**University.**—The establishment and incorporation of a university for the province is the object of No. 42. *Inter alia* it is enacted that—

The Senate shall make all provision for the education of women in the university in such manner as it shall deem most fitting, provided, however, that no woman shall by reason of her sex be deprived of any advantage or privilege accorded to male students of the university.

**Architects.**—In common with other professions (see *supra*) the architects are organised by No. 43 into an association with a view to securing among the members that species of knowledge which shall promote the artistic, scientific, and practical efficiency of the profession.

**Veterinary Surgeons.**—The members of this calling are formed into an association by No. 57, similar to that of the architects and others.

**1907** Acts passed—49: Public 23; Local and Private, 26.

**Election Petitions.**—The machinery for the trial of election petitions is constituted by No. 2 upon the customary lines.

**Supreme Court.**—The Courts of the North-West Territories continued to exercise jurisdiction in the new provinces of Alberta and Saskatchewan until new ones could be established. No. 3 sets up a Supreme Court with a Chief Justice and four puisne judges with—

powers, rights, incidents, privileges, and immunities, as amply and as fully to all intents and purposes as the same were, on and prior to the fifteenth day of July, one thousand eight hundred and seventy, used, exercised, and enjoyed by any of the judges of any of Her late Majesty's Superior Courts of Law or Equity, or by the judges of Her late Majesty's Court of Exchequer as a Court of Revenue, or by the judges of the Court of Probate in England as well as by the judges of any of Her late Majesty's Courts created by Commissions of Assize, of Oyer and Terminer and of Gaol Delivery, or any of such commissions.

**District Courts.**—After establishing the Supreme Court, the Legislative Assembly next proceeds in No. 4 to the constitution of district courts throughout the province. They have jurisdiction in matters not involving a sum of more than \$400. Provisions is made for the transfer of cases to the Supreme Court and *vice versa*.

An action by or against a judge of a district court which is within the competence of a district court may be brought in the district court of any district adjoining that in which such judge resides.

The Courts have jurisdiction in probate matters, and the judges "may demand and take to their own use" the fees, provided that they do not exceed \$1000 per annum when the balance is payable to the treasurer of the province.

The parties to an action may agree that the judge's decision shall be final. Otherwise an appeal lies to the Supreme Court.

The judge is also a justice of the peace and has power to try criminal offences under Part LIV. of the Criminal Code, 1892.

**Assignments.**—Official assignees are appointed by No. 6 in each judicial district of the province, and assignments for the benefit of creditors are to be carried out under their supervision unless the creditors determine otherwise.

**Lunacy.**—The procedure to secure the committal of an insane person is regulated by No. 7. An appeal lies from a justice's order to a judge of the Supreme Court.

Treaty Indians shall not be removed to an asylum unless the expense of their maintenance and other charges are guaranteed by the superintendent general of Indian affairs.

**Railways.**—No. 8 is in the nature of a general clauses Act containing provisions as to the organisation of railway companies and the general working of the lines applicable to all companies constituted hereafter unless the special Act contains an exemption.

**Licensing Law.**—The old law of the North-West Territories is amended by No. 9 in various particulars. Hotel licences are permitted in proportion to the number of the population, and no licence can be granted in a village having less than forty dwelling-houses.

Every licensed hotel shall contain in addition to what is required for the use of the licensee, his family and servants, the number of bedrooms following, that is to say—

(a) In cities at least forty-five ;

(b) In towns at least thirty ;

(c) In villages at least twenty ;

and in every case a suitable complement of bedding and furniture.

No cheque for wages may be cashed on licensed premises. No person under twenty-one may linger about the bar-room.

**Villages.**—For purposes of local government, areas not greater than six hundred and forty acres and containing less than twenty-five occupied houses, may be constituted by No. 10 as villages governed by a council of three members in accordance with the system prevailing in the constitution of the province. The council, in addition to raising rates, have special duties imposed upon them with a view to preventing disease and fire.



**Local Improvements.**—The arrangement for the constitution of local authorities existing in the North-West Territories is continued in the new province by No. 11. Districts are to comprise an area of not less than one hundred and eight nor more than two hundred and sixteen square miles, with a resident population in the proportion of one resident to each two square miles. District councils shall consist of not less than three nor more than six members. Their chief work is to supervise the levying of rates and taxes.

**Public Health.**—A Provincial Board of Health is constituted by No. 12 to supervise the work of the local boards concerned with all matters affecting the interests of health and life of the people. *Inter alia* the provincial health officer shall inspect all public and charitable institutions. Among other measures for safeguarding the public health, it is enacted that elections may be suspended in times of epidemic. A schedule contains a great deal of practical instruction under the description of "prescriptions for quarantine, disinfection," etc.

**Vital Statistics.**—The Vital Statistics Act, No. 13, makes provision for the registration of births, marriages, and deaths.

**Game.**—The preservation of game is ensured by No. 14 re-enacting with some small amendments the law previously prevailing in the North-West Territories.

**Noxious Weeds.**—The term applies to a long list of weeds which by authority of No. 15 may be destroyed for the protection of crops.

**Dairymen.**—No. 16 encourages the formation of associations of dairymen for the manufacture of butter and cheese.

**Public Libraries.**—Local authorities may establish by authority of No. 17 public libraries. Grants from the Provincial Treasury may be made for the purchase of books to an amount corresponding to the sum spent by the local authorities up to a limit of \$300 per annum, and \$50 per annum for newspapers.

**Taxation.**—Nos. 18 and 19 are concerned with the raising of an education tax and the taxation of corporations.

**Legal Profession.**—Barristers and solicitors are by No. 20 incorporated into an association similar to other professions (*b*) and having a constitution corresponding with those existing in other provinces. The appointment of King's Counsel and precedence at the Bar are the subjects of another Act (No. 21).

**Alberta Historical Society.**—No. 23 constitutes a society—

to encourage the study of the history of Alberta and Canada, to rescue from oblivion the memoirs of the original inhabitants, the early missionaries, fur-traders, explorers, and settlers of the north and west of Canada, to obtain and preserve narrations in print, manuscript, or otherwise of their travels,

(*b*) See *supra*, pp. 193, 194.

adventures, labours, and observation, to secure and preserve minerals, archaeological curiosities and objects generally illustrative of the civil, religious, literary, and natural history of the country, and to establish a museum and library.

## 2. BRITISH COLUMBIA.

**1898** (a) Acts passed—Public, 45; Private, 23.

**Constitutional.**—The Re-Distribution Act (No. 38) (b) provides for the re-distribution of British Columbia into electoral divisions. The Legislative Assembly is to consist of thirty-eight members, to represent the electoral districts, and to be elected in manner provided by the Provincial Elections Act. The boundaries of the districts and ridings are defined, and the number of members to be returned by each. After the passage of the Act, the registers of former districts shall be closed, and the Lieutenant-Governor in Council shall appoint collectors for the newly constituted districts to make up new registers of voters. Courts of revision are to be held by collectors on the tenth day before the election, for the purpose of hearing objections to any names entered upon the register; and appeals therefrom are to be heard by the county court judge.

The Provincial Elections Amendment Act, No. 18, repeals ss. 14 and 15 of the Provincial Elections Act, and substitutes fresh clauses dealing with interrogatives to be answered by persons claiming to vote.

The Provincial Elections Act Amendment Act, No. 19, re-enacts the sections of the Provincial Elections Act relating to the ballot.

**Municipalities.**—The Municipal Elections Amendment Act, No. 20, empowers the council of any township to provide by bylaw that householders whose names have been lawfully placed on voters' list be entitled to vote without making an annual application, unless change of residence or other change has altered their qualifications.

The Municipal Clauses Amendment Act, No. 35, amends the Municipal Clauses Act with regard to the qualifications of reeve, councillor, etc., and re-enacts the clauses dealing with the sale of land for municipal taxes in arrear. No writ of execution against a municipality is to be issued without the leave of a judge of the Supreme Court, which is to be obtained on summons. The Act also authorises municipalities, when required, to pay money into court as security for

(a) Contributed by Walter Peacock, Esq.

(b) Repealed by No. 17 of 1904, *infra*, p. 223.



payment of judgment debt or damages, and to pass bylaws authorising the borrowing of the money for the purpose.

**Public Works.**—The Public Dyking Act, No. 17, confirms the purchase made by the Lieutenant-Governor in Council of certain dyking debentures in pursuance of the Dyking Debenture Act, 1897; authorises the issue of further debentures to meet the cost of the completion and extension of dyking works commenced in pursuance of the same Act, and provides for further works and fresh borrowing.

The British Columbia Public Works Loan Act (1897) Amendment Act, No. 30, authorises the Lieutenant-General in Council to raise by sale of debentures a larger sum than was authorised by the Act of 1897; and the subsidies in aid of the construction of certain railways are increased.

**Land Registry.**—The Land Registry Act Amendment Act, No. 29 (c), enables any person deprived of land through fraud or misrepresentation, in the registration of another as proprietor of such land, to bring an action for recovery of damages against the person by whose fraud he was deprived; but this is not to prevent proceedings being taken against the registrar in respect of any loss not recovered in such action. Purchasers or mortgagees for value, however, are not subject to such action, even though they derive title through a person registered as owner through fraud. Should the person liable be dead, or not to be found, an action can be brought against the registrar as nominal defendant. A remedy for mistakes of the registrar is provided by action against him for recovery of damages. Where damages are recovered, the Minister of Finance, on the judge's certificate of the fact of such judgment, is to pay the amount and charge it to the assurance fund. This fund is formed by deducting 20 per cent. from the amount of fees received by the registrar and accumulating with interest until it reaches \$50,000. The sections dealing with application to the Court by persons dissatisfied with registrar's decisions or orders, or by the registrar in matters of law or of fact, are amended.

**Escheats.**—The Escheats Act, No. 21, authorises the Attorney-General to cause possession to be taken, in the name of the Crown, of lands that have been escheated through intestacy, or have become forfeited through any cause except crime, and, where possession is withheld, to cause an action similar to other actions for the recovery of land to be brought for the recovery thereof. The Lieutenant-Governor in Council is empowered to grant such lands, or, in the case of personal property, to make an assignment to legal or moral claimants, or to any person, as a reward for discovering the escheat or right of the Crown. The grant may be made without actual entry and although the lands are

not in the actual possession of the Crown. The Act also provides for the waiver of Crown rights in the case of forfeitures.

**Company Law.**—The Companies Act Amendment Act, No. 13, amends the Companies Act, 1897, and provides that every provincial company registered in the province before the passage of the Act of 1897 as a foreign company shall be subject to it.

The Companies' Winding-up Act, No. 14, deals with the voluntary winding-up of companies, and is based on the (Imperial) Companies Act, 1862 (*d*).

**Legal Professions.**—The Legal Professions Amendment Act, No. 8, provides that an applicant for call or admission as barrister or solicitor may base his claim on previous call or admission in more than one place or province in her Majesty's dominions, so long as the place or province where he has been called or admitted in the first instance requires not less than three years' study.

**Profession of Medicine and Surgery.**—The Medical Act, No. 9, provides that the medical profession incorporated under the name of the Medical Council of British Columbia be henceforth known as the College of Physicians and Surgeons of British Columbia, and be a body corporate with power to acquire real or personal property and to sue or be sued. The college is to have a council, the constitution, officers, and meetings of which are dealt with in the Act. A medical register is to be kept, and only those whose names are inscribed thereon are entitled to practise. The qualifications of persons entitled to be registered are defined, and include homœopathic physicians holding a diploma of qualification from an authorised college, requiring at least a four years' course of study, upon passing a satisfactory examination before the council. Penalties are imposed for false declarations in obtaining registration, and for practising without registration; and there are clauses dealing with subjects for anatomy.

**Industrial Communities.**—The Industrial Communities Act, No. 6, authorises the incorporation of societies for providing members with the means of self-employment in any branch of lawful industry; for making provisions against sickness, and relieving the widows and children of deceased members; for the investigation of science, the care and education of children, and any benevolent or charitable purpose. The Act enables such societies to appoint trustees or other officers for conducting their affairs: to make bylaws, and also to acquire real and personal property for the promotion of the objects of the society.

**Benevolent Societies.**—The Benevolent Societies Amendment Act, No. 3, extends the powers of benevolent societies with regard to the establishment of chambers of mines, mining institutes and associations.



The Agricultural Credit Societies Act, No. 2, is for the encouragement of trades and agriculture by the establishment of mutual credit associations for the purpose of procuring moneys by contributions from members, to be employed in loans to members only, for their advancement. Loans may be made for aiding a member to drain and clear land, to purchase live stock, farming implements, etc., the construction of fences and buildings; and to a certain extent the funds of the society may be employed in the purchase, use, and repair of machinery for the use of members in clearing and draining land. Provision is also made for the issue of debentures and for winding up.

**Farmers' Institutes.**—The Farmers' Institutes Amendment Act, No. 5, amends the Farmers' Institutes and Co-operation Act with regard to the objects of the institutes, and in other unimportant particulars.

**Labour.**—The Master and Servant Amendment Act, No. 31(*e*), provides that—

Any agreement or bargain, verbal or written, expressed or implied which may be made between any person and any other person not a resident in Canada for the performance of labour or service, or having reference to the performance of labour or service, by such other person in the province of British Columbia, and made as aforesaid previous to the migration or coming into Canada of such other person whose labour or service is contracted for, shall be void and of no effect as against the person only so migrating or coming.

This section, however, is not to be so construed as to prevent—

Any person from engaging under contract or agreement skilled workmen not resident in Canada to perform labour in British Columbia in or upon any new industry not at present established in British Columbia, or in any industry at present established, if skilled labour for the purpose cannot be otherwise obtained, nor shall the provisions of this section apply to teachers, professional actors, artists, lecturers, or singers.

The Truck Act, No. 43, ss. 3–9, enacts that in all contracts for the employment of any workman, the wages of such workman shall be made payable in lawful money of Canada only, or the contract shall be illegal, null, and void. Contracts that made provisions as to the place or manner of expending wages are also void. Any workman shall be entitled to recover from his employer so much of his wages as shall not actually have been paid in lawful money of Canada, and the employer may not set off against wages goods supplied on account of wages, nor sue for goods so supplied. These sections, however, only apply to workmen employed on works in some incorporated town or within three miles thereof, and are not to prevent an employer from contracting to

(*e*) See *infra*, p. 203.

supply to such workmen medicine or medical attendance, or fuel, or provender for any working animal employed by such workmen in their trade. Railway companies may also contract to supply workmen employed on permanent works with board and lodging on their boarding-cars, and deduct the same from wages.

The Labour Regulation Act, No. 28, prohibits the employment of Chinese and Japanese on certain works.

**Minerals.**—The Mineral Claim Advertisement Act, No. 32, provides that in a notice of application for a certificate of improvements of a mineral claim, s. 36 (e) of the Mineral Act shall not be construed as requiring the separate publication of a notice for each mineral claim, but a number of claims may be included in one notice.

The Mineral Act Amendment Act, No. 33, amends the Mineral Act with regard to fractional mineral claims, the mode of staking out a claim and the purchase of a claim, and enables a free miner, on payment of an additional fee, to record his certificate, after the proper time has elapsed.

The Placer-Mining Act (1891) Amendment Act, No. 34, provides that in the case of the purchase of claims from persons who have failed to take out a free miner's certificate, the purchaser may make good his title by paying within one month from the time of discovering the default, to the recorder of the mining division, the fee which ought to have been paid. The Act also provides for consolidating leases of placer-mining ground up to six hundred and forty acres; and water grants made for working any one of such leases shall be appurtenant and used on any one of such consolidated leases.

**Game.**—The Game Protection Act, No. 24 (f), amends and consolidates the Acts for the protection of certain animals, birds, and fishes. The exportation of certain animals and game birds is prohibited, and no person other than the importer on his own property may hunt, kill, or wound game birds or animals imported for acclimatisation until such times as the Lieutenant-Governor shall appoint. There is a schedule showing the close seasons, and the number of any kind of animal or game bird that may be taken in one season.

**Revised Statutes.**—The Statutes Revision Act, No. 40, declares the Acts contained in the Revised Statutes to be the laws of the province, including certain Acts specified in a schedule, which are new provisions framed by the Commissioner for the improvement of the law.

**Definition of Time.**—The Definition of Time Act, No. 42 (g), provides that where an expression of time occurs in any Act or legal instrument, the time shall be held to be standard time, which is to be reckoned as

(f) See *infra*, p. 222.

(g) See *infra*, p. 208.



regards that part of the province which lies east of the meridian 120° long. as seven hours, and as regards that part that lies west as eight hours, behind Greenwich time.

**1899** (*h*) Acts passed—89: viz., Public, 77; Private, 12.

**Elections.**—The Provincial Elections Act Amendment Act, No. 25 (*i*), provides for a six months' instead of a twelve months' register. Those disqualified from being entered on the register include judges of Supreme or county Courts, sheriffs or deputy sheriffs, Provincial Government employees in receipt of salaries of at least \$300 per annum, sailors, soldiers on full pay in Imperial service. This, however, is not to apply to Ministers of the Crown, the Speaker, members of the Legislative Assembly, or school teachers. New provisions are passed with regard to the recount of ballots by the county court judge.

**Administration of Justice.**—No. 20 (*k*) amends the Supreme Court Act with regard to the sittings of the full court for hearing appeals and other matters.

The Absconding Debtors Act Amendment Act (No. 22) enacts that the delivery of a writ of attachment to a sheriff shall not bind the land of the person against whom it is issued, nor shall any land be attached or seized under any writ of attachment; and provides for the issue of certificates respecting proceedings in the Court from which the writ of attachment has issued, the registration of certificates, and the procedure to enforce them.

The Execution Act Amendment Act (No. 27) abolishes the writ of *faci fieri de terris*.

The Judgments Act (No. 33) (*l*) provides that on any judgment being entered or recovered, a certificate of such judgment signed under the seal of the Court in which judgment has been entered by the officer of the Court empowered to grant certificates may be registered in the Land Registry Offices and Land Titles Offices in the province, and from the time of registering the judgment shall form a lien on the hands of the judgment debtor. The lien shall cease in two years unless the judgment has been re-registered. Fraudulent deeds and conveyances rendered void by 13 Eliz. c. 5, shall be void. A judgment creditor who has registered a certificate of judgment may get a fraudulent conveyance on the part of the debtor set aside by motion in the Supreme Court calling upon the judgment debtor to show cause

(*h*) Contributed by Walter Peacock, Esq.

(*i*) Repealed by No. 17 of 1904, *infra*, p. 223.

(*k*) Repealed by No. 15 of 1904, *infra*, p. 222.

(*l*) See *infra*, p. 210.

why the land should not be sold to realise the amount payable under the judgment.

The Jurors Act Amendment Act (No. 35) provides that the panel of grand jurors shall consist of thirteen grand jurors and no more.

The Replevin Act (No. 63) provides that where goods have been wrongly distrained the person complaining may bring an action of replevin, or where goods have been wrongfully taken or detained, the persons capable of maintaining an action for damages may bring an action of replevin for the recovery of goods, and may claim for and recover the damages sustained. But the Act does not extend to goods taken in execution by the sheriff under any writ. Actions of replevin may be brought in the county court. The schedule contains replevin rules in which the writ of replevin is abolished. A party who is entitled to replevy goods may obtain an order therefor in an action commenced by a writ of summons.

No. 69 amends the Summary Conviction Act with regard to procedure in the execution of distress warrants.

**Civil Service Departments.**—The Attorney-General's Act (No. 5) provides for a department of the civil service to be called the Department of the Attorney-General, over which the Attorney-General shall preside. In addition to being the official legal adviser of the Lieutenant-Governor, his duties include the superintendence of all matters connected with the administration of justice, the superintendence of prisons, etc. He shall see that the administration of public affairs is in accordance with the law, and is generally entrusted with the powers and duties belonging to the office of the Attorney-General and Solicitor-General of England as far as applicable to the province.

The Department of Lands and Works Act (No. 37) provides for a Department of Lands and Works to be presided over by the Chief Commissioner of Lands and Works, appointed under the Great Seal of the province, and to consist of two branches. The lands branch will be under a Deputy Commissioner of Lands and shall have charge of public lands and water rights. The works branch will be under the Chief Engineer, whose duty it will be to cause to be prepared plans and estimates of all public works about to be constructed or repaired by the Department; to report on questions of public works submitted to him, and generally to advise the Department on all architectural and engineering questions affecting public works. Other officers may be appointed by the Lieutenant-Governor in Council.

The Department of Mines Act (No. 48) provides for a Department of Mines to be presided over by the Minister of Mines, which will have charge of all matters affecting mining, including the administration of



the laws with respect to all kinds of mining. The Lieutenant-Governor in Council may appoint a Deputy Minister and other officers.

The Provincial Secretary's Act (No. 59) provides for a Department of the Provincial Secretary, who will preside over it and be the keeper of the Great Seal of the province, and shall issue all letters patent under the Seal and countersign them. He shall be keeper of all registers and archives of the province, and all the powers assigned by law to provincial secretaries and registrars of the different provinces of the Dominion of Canada so far as applicable to British Columbia; he shall also be Provincial Registrar, and shall register all letters patent, writs, etc., and have charge of all matters connected with the holding of elections for the Legislative Assembly, and shall make an annual report to the Lieutenant-Governor.

The Revenue Act Amendment Act (No. 65) provides for a Department to be called the Treasury Department, presided over by the Minister of Finance, which shall have the management and control of the revenues and expenditure of the province. The Lieutenant-Governor in Council may appoint a Deputy Minister of Finance and such other officers and servants as may be required.

**Revenue.**—The Revenue Tax Act Amendment Act (No. 66) brings all employers of labour within the Revenue Tax Act; but permits the employer to deduct the tax from amount payable to employees.

No. 68 amends the Succession Duty Act with regard to the property liable to succession duty, which includes—

- (a) Property situated in the province;
- (b) Property voluntarily transferred in contemplation of death;
- (c) Donations *mortis causâ*, or voluntary dispositions made within twelve months before death;
- (d) Property transferred by owner to himself jointly with some other person;
- (e) Property passing under a settlement;
- (f) Annuities to the extent of the beneficial interest arising by survivorship or otherwise on death of deceased.

The sub-sections regulating the amount of duty payable are re-enacted.

**Queen's Counsel.**—The Queen's Counsel Act (No. 60) (*m*) provides that upon the appointment of any person to the office of Attorney-General a commission shall forthwith be issued appointing him one of her Majesty's counsel learned in the law. Ex-Attorney-Generals are also to be appointed, and not more than five other persons who have at least five years' standing at the Bar of the province, within three months from the Act coming into force, and not more than two persons annually.

(*m*) See *infra*, p. 211.

**Municipalities.**—The Municipal Districts Act (No. 54) provides for the government of particular territory to which a sudden rush of people has been drawn by the discovery of mineral wealth, and empowers the Lieutenant-Governor in Council to declare certain specified territory to be a municipal district, in which all the powers conferred upon the councils by the Municipal Clauses Act shall be vested in the Lieutenant-Governor in Council.

No. 55 amends the Municipal Incorporation Act by authorising the Lieutenant-Governor in Council to incorporate into a city or town municipality any locality upon receiving a petition from the property owners of more than one-half the value of the land to be included, provided there be within the boundaries at least one hundred male British subjects of twenty-one years.

**Land.**—The Land Act Amendment Act (No. 38) re-enacts the clauses of No. 110 of the Revised Statutes, which deal with sale and leases of Crown lands. Coal and petroleum are reserved from all Crown grants.

**Registration.**—The Torrens Registry Act (No. 62) (*n*) provides for the formation of land titles districts for each of which the Lieutenant-Governor in Council shall appoint a barrister or solicitor of British Columbia to be Land Registrar, and other officers as may be deemed advisable. He may also appoint one or more inspectors of land registries.

*Manner of bringing Lands under New System.*—As soon as any portion of the province is constituted into a land titles district, all registrations under the old system shall cease, and all registrations shall in the first place be made by an application to bring the lands under the new system. “The owner of any estate or interest in land may . . . apply to the proper Land Registrar and have his title registered under the new system. And each person entitled to any estate or interest in such land, whether legal or equitable, and whether it be a life estate or an estate in remainder or reversion, shall be entitled to a separate certificate for such estate or interest.” When application is made by the owner of the equity of redemption to bring mortgaged lands under the new system, the application shall be deemed to be for the whole estate, both legal and equitable. The Land Registrar shall serve notice on any adverse claimant that certificate of title will issue unless the claimant within a limited time file a *caveat* forbidding its issue. The evidence of title upon which the Land Registrar may act need not be sufficient in strict point of law, provided he is satisfied, but rules are laid down for his guidance.

*Effect of Registration.*—The title of registered owner shall be deemed

(*n*) Repealed by No. 23 of 1906, *infra*, p. 229.



to be subject to reservations in Crown grants, Government and municipal rules and taxes, easements, leases not exceeding three years, certificates of attachment duly registered, *caveats*, etc. Every certificate of title, which shall be in duplicate signed by the Land Registrar and sealed with the seal of his office, shall be conclusive evidence that the person named therein is entitled to the land, and no action of ejectment shall be brought against the registered owner except in certain cases, as of a mortgagee against a mortgagor in default.

*The Powers of the Land Registrar.*—He may require the production of documents, summon witnesses, correct errors in certificates, enter *caveats* on behalf of her Majesty, infants, and persons of unsound mind or absent from the province to prohibit the transfer or dealing with any land belonging, or supposed to belong, to the Crown, etc.

*Transfers.*—The memorandum of transfer shall for description of land refer to the certificate of title, and shall contain an accurate description of the estate or interest to be transferred, and a memorandum of all leases and incumbrances to which it may be subject. The form is prescribed in schedule B. No words of limitation are necessary in order to convey all or any title.

*Leases.*—Every instrument shall refer to the certificate and shall be in prescribed form. Covenants by the lessee are implied for payment of rent, rates, and taxes, and repairs, and there is an implied power in lessor of entry to view state of repairs, and re-entry for breach of covenants.

*Mortgages.*—Incumbrances created prior to issue of certificate of title may be filed in the office of the Land Registrar, who shall endorse on the certificate and duplicate a memorandum of such incumbrance. A mortgage under the new system shall have effect as security, but shall not operate as a transfer of the land thereby charged. In case of default in payment for the space of one calendar month the mortgagee may, after giving written notice, a copy of which must be filed in the Land Titles Office, to the mortgagor, enter into possession of the land and receive the rents, and whether in or out of possession may make any lease of the same or any part thereof as he may see fit, and if such default continue for the further space of a calendar month, he is authorised to sell the land, and the sale shall be as valid and effectual as if the mortgagor had executed the same.

*Minerals.*—The Mineral Act Amendment Act (No. 45) and the Placer Mining Act Further Amendment Act (No. 51) modify the form of a free miner's certificate and provide for a special certificate to be obtained upon payment of a fee of fifteen dollars by any free miner whose free miner's certificate has been allowed to expire. Such special certificate shall have the effect of reviving the title of the person to

whom it is issued to all mineral claims which such person owned at the time of the lapse of his former certificate.

The Placer Mining Act Amendment Act (No. 50) re-enacts s. 3 of No. 136 of the Revised Statutes as to persons who are entitled to rights of free miners.

No. 58 extends the rights of the Crown to prospect for minerals on railway lands to all free miners.

**Liquor.**—The Liquor Traffic Regulation Act Amendment Act (No. 41) imposes penalties on the holders of retail liquor licences who allow gambling on their premises.

**Liquor Licences.**—The Liquor Licences Act (No. 39) provides for the formation of licence districts, and a Board of two honorary Licence Commissioners for each district meeting twice a year. All provincial constables are to be licence inspectors, and a chief licence inspector is to be appointed for each district. Licences may be hotel licences or wholesale licences. Liquor licences signed by the chief inspector and granted for six months or a year shall be licences only to the person therein named, and for the premises therein mentioned.

**Applications.**—Each applicant shall forward to the chief inspector a petition for the granting of such licence signed by at least two-thirds of the resident householders, his own affidavit stating that he is twenty-one, is not a felon, and has been resident in British Columbia for a year, the affidavit of neighbours as to character, etc., and his bond in the sum of \$500 as security for payment of all fines and penalties which may be incurred under the Act. At least fourteen days before the meeting of the Board the chief inspector shall advertise a list of applications and the place of meeting of the Board. On application for a hotel licence the inspector shall make a report in writing to the Commissioners, containing—

- (1) A description of the house ;
- (2) If the applicant be the existing licensee, a statement as to the manner in which the house has been conducted, the character of frequenters, and convictions, if any ;
- (3) A statement of the number, position, and distance of licensed houses in the neighbourhood ;
- (4) A statement whether the licensing of the premises is required for public convenience ; and
- (5) A statement whether the applicant is or is not the true owner of the business of the hotel.

The application shall be heard and determined by the Commissioners in a summary manner. The Commissioners have power to cancel licences where premises are not kept in accordance with the provisions of the Act.



**Trade Licences.**—The Licences Act (No. 40) compels persons using certain trades, occupations, or professions to take out licences, paying sums as specified in schedule—*e.g.* billiard-saloon keepers, \$5 for each table for every six months; barristers, \$25 for every six months; bankers, \$400 for one year.

**Labour.**—No. 43 repeals the Master and Servant Amendment Act, 1898, (o) which dealt with contracts of service prior to coming to Canada, and re-enacts the clauses, substituting the words “British Columbia” for “Canada.”

**Special Surveys.**—The Special Surveys Act (No. 71) empowers the Attorney-General to direct a special survey to be made of any lands in a city for the purpose of correcting any error in respect of any existing survey or plan, such special survey to be made under the guidance and instructions of the Inspector of Land Titles Offices. The Act provides for the hearing of objections to the plan, and on its approval it shall become the official plan of the portion of the city thereby affected, and shall be binding on all owners, corporations and persons.

**Toll Roads.**—The Development Toll Roads Act (No. 75) empowers the Lieutenant-Governor in Council, out of moneys borrowed for the purpose, to construct public roads to be known as “development toll roads,” to appoint tollgate keepers, and to fix the rate of toll, to be based upon the amount required to pay cost of maintenance and interest upon money used on construction and an annual sinking fund of at least 1 per cent. upon the cost of construction.

**Steam Boilers Inspection.**—The Steam Boilers Inspection Act (No. 10) provides for the appointment of district inspectors of steam boilers whose duty shall be to inspect all steam boilers over two horse-power not subject to the supervision of the Dominion of Canada, at least once in each year, and to give certificates of inspection and to investigate accidents to boilers. Penalties are imposed for constructing defective boilers and operating uncertificated boilers.

**Fire Precaution.**—The Fire Escape Amendment Act (No. 28) provides that the doors of all public buildings shall open outwards as a precaution in case of alarm from fire or other causes.

**Definition of Time.**—No 74 amends the Definition of Time Act, 1898, (p) and provides that where an expression of time occurs in any Act or legal instrument, it shall be held to be Pacific standard time—*i.e.* eight hours behind Greenwich time—unless otherwise stated.

(o) See *supra*, p. 200.

(p) See *supra*, p. 201.

**1900** (q) Acts passed—56 : Public, 44 ; Private, 12.

**Loan Societies.**—The Extra-Provincial Investment and Loan Societies Act (No. 1) provides for the licensing within the province of extra-provincial societies incorporated for the purposes of raising moneys by periodical subscriptions and loaning the same to members of the society. A licence is obtainable on presentation of petition to the Registrar of Joint Stock Companies, the filing of certain documents, and on payment of a fee of \$250. A licensed society is empowered to acquire and hold real estate not exceeding in value \$3000 in any one place exclusive of improvements, and to hold any real estate *bonâ fide* mortgaged to it to secure payment of the shares subscribed for by the members, with the usual remedies of a mortgagee. Subscriptions may be recovered by action in the usual way. Other clauses deal with borrowing powers, the annual statement and return to be filed in the office of the Provincial Secretary, and the deposit with the Minister of Finance. The provisions of Acts in force in the province relating to the winding-up of companies shall apply to licensed societies.

**Canadian Contingent Exemption.**—The Canadian Contingent Exemption Act (No. 3) relieves members of the Canadian contingent serving in South Africa from the operation of certain provisions of the Placer Mining Act, etc., by extending the duration of free miners' certificates held by them and renewing lapsed mineral claims.

**Companies.**—The Companies Act, 1897, Amendment Act (No. 5) makes slight amendments in the borrowing powers of companies, and the powers of non-personal liability mining companies. Certain land companies are authorised to pay dividends out of the net proceeds of the sales of lands.

**Evidence** (r).—The Evidence Act Amendment Act (No. 9) amends clauses in the principal Act dealing with the privilege of witnesses where answer tends to criminate. Parties to civil causes and their wives are competent as witnesses, but plaintiffs in breach of promise cases must be corroborated by some other material evidence.

**Immigration.**—The British Columbia Immigration Act (No. 11) regulates immigration into British Columbia. An educational test is provided. An unauthorised immigrant is liable to a penalty of \$500, recoverable by distress in default of payment, and in the event of distress proving inadequate, a term of imprisonment not exceeding twelve months. An unauthorised immigrant cannot acquire or hold land, and is not entitled to the privileges of a free miner, nor may he exercise the franchise.

(q) Contributed by Walter Peacock, Esq.

(r) See *infra*, p. 217.



**Judgments.**—The Judgments Act, 1899, (s) Amendment Act (No. 12) amends the principal Act as regards the method of registering judgments.

**Labour.**—The Labour Regulation Act (No. 14) provides a simple educational test for workmen, and prohibits the employment of those that fail.

**Land Registration.**—The Land Registry Act Amendment Act (No. 15) (t) provides for the identification of judgment debtors, the filing of duplicate plans, one to be kept for the use of the public making searches and one for reference in the Land Registry Office. Land sold under the provisions of the Judgments Act, 1899, may upon application and production of the conveyance to the purchaser be registered, and outstanding certificates of title shall be deemed to be cancelled.

**Liquor Licences.**—The Liquor License Act (No. 18) (u) provides for the formation of licence districts without the limits of any municipality and of a board of three honorary Licence Commissioners meeting twice a year and holding office for one year. All provincial constables are to be licence inspectors, and a chief licence inspector is to be appointed for each district. Licences may be either hotel or wholesale licences. Liquor licences signed by the chief inspector, and granted for six months or a year, shall be licences only to the person named therein and for the premises therein mentioned. Each applicant must forward to the chief licence inspector a petition for the granting of a licence signed by at least two-thirds of the householders of the locality, his own affidavit stating that he is twenty-one and has been a resident in the province for a year, and the affidavit of his neighbours as to character. The inspector must report in writing for the information of the Commissioners, who must exercise their discretion as on each application, which will be heard publicly and determined in a summary manner. Further provisions deal with the transfer and cancellation by the Commissioners of Licences and the penalties for the sale of liquor without licence, ranging from \$50 to \$1000 on a third offence, or two years' imprisonment in default.

**Mortgagees.**—The Mortgagees' Legal Costs Act (No. 22) entitles a solicitor to receive fees for investigating the title to property mortgaged to himself, and they will be recoverable from the mortgagor. Solicitors may charge also for subsequent work in connection with such mortgages, whether made before or after the commencement of the Act.

(s) See *supra*, p. 202.

(t) See *supra*, p. 205; and Repealing Act, No. 23, of 1906, *infra*, p. 229.

(u) See *infra*, p. 230.

**Municipal Clauses.**—The Municipal Clauses Act Amendment Act (No. 23) prohibits alterations in buildings occupied for dwelling purposes whereby the sanitary condition may be prejudicially affected, and authorises the pulling down of buildings where insanitary alterations have been carried out.

**Official Administrator.**—The Official Administrator's Act Amendment Act (No. 27) re-enacts sections of No. 146 Revised Statutes dealing with the appointment of the Official Administrator and applications by him for order to administer the estate of persons dying intestate or without having appointed executors.

**Queen's Counsel.**—The Queen's Council Act, 1899 (*x*), Amendment Act (No. 31) further regulates the number of Queen's Counsel that may be appointed in each year and settles precedence among members of the provincial Bar.

**Shop Hours.**—The Shops Regulation Act (*y*) (No. 34) authorises municipal councils by bylaw to require the closing of shops at an hour not earlier than six o'clock in the afternoon and on half-holidays not earlier than twelve. The council may pass the bylaw on the application of not less than three-fourths of the occupiers of the class of shops to which the application relates. The bylaw may be repealed when more than half of the occupiers of shops are opposed to its continuance. The Act also regulates the hours of labour in shops of young persons—that is to say, boys and girls under sixteen years; the hours must not exceed sixty-six and a half in a week including meal-times. Suitable seats are to be provided for female employees.

**Succession Duty.**—The Succession Duty Act Amendment Act (No. 35) provides for the recovery of succession duty by action in the Supreme Court, which also has jurisdiction to determine what property is liable to duty, the amount thereof and the time when the same is payable. Subject to the discretion of the Court as to costs, an action may be brought for any of the purposes of the Act notwithstanding the time for payment of the duty has not arrived. "Where any property which has, previous to the death of a person whose estate is subject to duty, been conveyed or transferred to some other person is declared liable to duty, the Court may declare the duty to be a lien on the property." The procedure is regulated, and clauses dealing with the amount of duty in certain cases are re-enacted. In determining the aggregate value of the estate the value of property outside the province is to be included.

**Coal Tax.**—The Coal Tax Act (No. 37). Every owner of a coal mine shall pay a tax of five cents per ton on all coal delivered from the mine after the coming into force of the Act. Likewise every

(*x*) See *supra*, p. 204.

(*y*) See *infra*, p. 216.



owner of coke-ovens shall pay a tax of nine cents per ton on coke, provided that no tax has been paid upon the coal from which the coke has been produced. These taxes are in addition to all royalty imposed by any other Act, but in substitution for all taxes upon the land from which the said coal is mined. Owners are to make monthly returns of coal mines or coke-ovens under oath, and at the same time pay the amount of tax upon the coal or coke shown in the return. Penalties for false returns are imposed.

**Assessment.**—The Assessment Act Amendment Act (No. 30)(z) re-enacts s. 6 of No. 179 Revised Statutes dealing with rates of taxation and fixing the scale of a graduated income tax. Ss. 10 and 14 relating to mineral taxation and the returns made by mine owners are also re-enacted.

**Trustees' Liability.**—The Trustees' Liability Act (No. 41) provides for the relief from personal liability by the Supreme Court of a trustee who has committed a breach of trust but has acted honestly and reasonably.

**Voting Machines.**—No. 43 permits the use of voting machines, which may be adopted for use at elections by bylaw passed by a two-thirds majority of the council of any municipality. The requirements of the machine are stated; it must provide facilities for secret voting, must prevent the voter from voting for more candidates than he is entitled to, must automatically adjust itself after a voter has voted, so as to be ready for the next voter, without any interference on the part of any person whatsoever. Directions also are given as to the method of voting.

**1901 (a)** Acts passed—87: Public, 64; Private, 23.

**Appointment of Agent-General.**—The Agent-General Act (No. 1) authorises the appointment of an Agent-General for British Columbia to act as representative and resident agent of British Columbia in the United Kingdom, to hold office during good behaviour at a salary of not less than \$10,000, inclusive of office rent and clerical assistance, with authority to exercise the functions of a commissioner under the Oaths Act and of a notary public.

**Steam Boilers.**—The Steam Boilers Act (No. 7) provides for the appointment by the Lieutenant-Governor in Council of a chief inspector and such other inspectors as may be deemed advisable to inspect boilers and machinery under the provisions of the Act; whose qualification is that they shall be British subjects with five years' experience as practical machinists, and have passed a satisfactory examination before

(z) See *infra*, p. 219.

(a) Contributed by Walter Peacock, Esq.

a board of examiners. The duties of the chief inspector are to examine specifications of boilers and see if they comply with requirements as laid down in the Act; to examine reports and accounts of inspectors and report to the Chief Commissioner of Land and Works; to make an annual report stating number of inspections and accidents to steam boilers, whether by explosion or otherwise. The duties of inspectors are to make internal and external examination of all new steam boilers within their district, and at least once a year afterwards, and to see that competent men are in charge of boilers before a certificate of inspection is granted. Engineers are classified in five grades and may obtain certificates from the Chief Commissioner of Lands and Works after having satisfied the chief inspector as to their competency.

**Protection of Children.**—By the Children's Protection Act (No. 9) it is the duty of the superintendent of police to provide for the visitation of children in temporary or foster-homes, and to see that a record is kept of all children placed out in foster-homes, and of all particulars connected with each case. The Act provides for the apprehension of neglected children under fifteen years of age by any officer, constable, policeman, or officer of any children's aid society approved by the superintendent of police, and any child so apprehended may be ordered, after examination before the judge, to be delivered to a children's aid society, to be sent to their temporary home until placed in an approved foster-home. In certain cases the Attorney-General may cause such child to be removed to an industrial home for a period not exceeding three years. The Act does not relieve any person from liability to contribute to the maintenance of the child, but the fact of contributions shall not deprive the society which is the legal guardian of the child of the powers and rights conferred by the Act. The incorporation of children's aid societies is provided for, and municipal councils are empowered to make bylaws to prevent children being in the streets after nightfall.

**Attachment of Debts.**—The Small Debts Act Amendment Act (No. 13) enables "a plaintiff at the time of issuing a summons for a debt or at any time after previous to judgment, upon filing with the magistrate who issued the summons an affidavit verifying the debt and stating that a third person or garnishee is indebted to the defendant and is within the Province," to obtain a summons for the payment to him of the amount of the debt due to the defendant from the garnishee.

The Supreme Courts Act Amendment Act (No. 14)(b) contains amendments with regard to the attachment of debts, and enables the debts or liabilities of garnishee or judgment debtor to be attached.

(b) Repealed by No. 15 of 1904, *infra*, p. 222.



**Creditors' Trust Deeds.**—No. 15 enacts that every assignment for the benefit of creditors shall be deemed valid if its construction and effect accord with its purpose, and shall not be set aside or defeated on any account whatsoever except actual fraud, notwithstanding any statute or law to the contrary. A counterpart of every such assignment shall be registered within twenty-one days from the date thereof in the office of any county court registrar, and notice of the assignment must be published by the assignee in one issue of the *British Columbia Gazette* and of one county newspaper. Assignments when registered in any land registry office under the provisions of the *Torrens Registry Act, 1899, (c)* shall take precedence of all certificates of judgments and executions and attachment against land and against goods not completely executed by payment, subject to a lien for the costs of such judgment or execution creditors. It is the duty of the assignee within five days of the assignment to call a meeting of creditors for giving directions with reference to the disposal of the estate, and every person claiming to be entitled to rank on the estate assigned must furnish particulars of his claim to the assignee.

**Demise of the Crown.**—The *Demise of the Crown Act (No. 17)* renders unnecessary the renewal of commissions or appointments by virtue whereof any public functionary in the Province held or exercised his office or profession and the oath of allegiance to the new Sovereign.

**Husband and Wife.**—The *Deserted Wives' Maintenance Act (No. 18)* provides that any married woman deserted by her husband may summon him before any stipendiary or police magistrate, or two justices of the peace, who, if satisfied that the husband, being able to maintain his wife, has wilfully refused or neglected to do so, and has deserted his wife, may order him to pay her a weekly sum not exceeding \$20, recoverable by distress. No order for payment of any sum by the husband may be made in favour of a wife who is proved to have committed adultery, unless the adultery has been condoned. Where adultery has been proved, the judgment shall not be evidence of adultery except for the purpose of proceeding under this Act.

**Voting: Exclusion of Indians.**—The *Provincial Elections Act Amendment Act (No. 22): (d)*

No Indian shall have his name placed on the register of voters for any electoral district or be entitled to vote at any election. Any collector of voters who shall insert the name of any Indian on any such register shall, upon being convicted thereof before any justice of the peace, be liable to a penalty not exceeding fifty dollars.

**Explosives.**—The *Explosives' Storage Act Amendment Act (No. 23)*

(c) See *supra*, p. 205.

(d) Repealed by No. 17 of 1904, *infra*, p. 223.

permits under certain conditions powder magazines to be kept within a city or town where mines are actually existing, or become established in any city or town, or within two miles of the limits thereof.

**Fisheries Board.**—The British Columbia Fisheries Act (No. 25)(e) provides for the appointment of a Board of Fishery Commissioners to act as an advisory board to the Lieutenant-Governor in Council in the framing of regulations for the better management, conservation, and regulation of all fisheries over which the Legislature of British Columbia has authority to legislate, to prevent or remedy the destruction and pollution of streams, the destruction of fish, and to forbid fishing except under the authority of leases or licences. The taking of fish in provincial waters, except to secure sufficient supply for personal or family use, by any means other than angling is forbidden without lease or licence. The buying, selling, or possessing fish in close season is prohibited, and provision is made for the setting apart of waters for the natural or artificial propagation of fish.

**Maternity Boarding-Houses.**—No. 29 regulates maternity boarding-houses and the protection of infant children. Part I. provides for the registration by municipal councils of houses for the reception of infants, and of persons applying to keep such houses, and prohibits more than one infant, except in case of twins, under the age of one year, being received for the purpose of maintenance or nursing apart from parents for a longer period than twenty-four hours, except in a registered house. Name, sex, and age and other particulars of every infant are to be registered by the person under whose care it is placed. Part II. prohibits the keeping of maternity boarding-houses unless registered, and may be put in force by bylaw by any municipal council properly incorporated.

**Crown Lands : Records of Pre-emption.**—The Land Act Amendment Act (No. 30) enables the Chief Commissioner of Lands and Works, when authorised to do so, to grant records of pre-emption of Crown lands divided into small holdings not exceeding forty acres in extent to any of his Majesty's subjects for personal occupation and cultivation for agricultural purposes.

**Public Loans for Railways, etc.**—The British Columbia Public Works Loan Act (No. 32) authorises a loan of \$5,000,000 for the purpose of constructing railways, roads, and other public works with a view to affording increased facilities for prospecting and developing the province generally.

The Temporary Overdraft Act (No. 33) authorises the Minister of Finance to make arrangements with any bank or banks within the province with a view to obtaining moneys in the interim of exercising



the borrowing powers of any of the Loan Acts by way of temporary advances or overdrafts without the issue of any form of debenture, bond, or Treasury scripts.

**Mines.**—The Coal-Mines' Regulation Act Amendment Act (No. 36) prohibits persons being employed as coal-miners, fire bosses, overmen, and shot lighters in any coal-mines who have not a certificate of competency. Provision is made for a Board of Examiners. The qualifications necessary for a coal-miner's certificate are a sufficient knowledge of the English language, the methods of, and the Acts relating to, coal-mining, and twelve months' previous employment in a coal-mine; and a shot lighter, fire boss, or overman must possess in addition a good knowledge of the character and effects of explosives.

The Inspection of Metalliferous Mines Act Amendment Act (No. 37) provides for a monthly return of output of every mine to be sent to the Department of Mines and amends the code of mine signals.

**Roads.**—The Municipal Clauses Act Amendment Act (No. 39) regulates the maintenance of inter-municipal roads and provides for the settlement of differences and the erection of inter-municipal bridges.

**Taxes.**—The Revenue Tax Act (No. 46) imposes an annual revenue tax of \$3 on every male person except militiamen and those over the age of sixty whose last yearly income did not exceed \$700. Every employer of labour is to pay the tax for his employees and to deduct the amount from wages.

**Bakeshops.**—The Shops' Regulation Act, 1900, (*f*) Amendment Act (No. 49) provides that bakeshops be constructed and kept in a sanitary manner, regulates the hours of labour, prohibits the employment of consumptive and scrofulous persons, and between the hours of 9 p.m. and 5 a.m. of persons under eighteen, and persons under fourteen years must not be employed in a bakeshop at all.

**South African Volunteers.**—The South African War Land Grant Act (No. 51) (*g*) provides for the recognition of the volunteers from British Columbia who have served in South Africa by grants of land in addition to pay and allowances.

**Taxation Assessment of Corporations.**—The Assessment Act Amendment Act (No. 56) (*h*) amends the principal Act with regard to the taxation of the income of banks and other corporations doing business in the province.

**Wood Pulp.**—The Wood Pulp Act (No. 67), in order to encourage the manufacture of wood pulp and paper, grants privileges as regards water rights to companies erecting pulp or paper mills.

(*f*) See *supra*, p. 211.

(*g*) See *infra*, p. 221.

(*h*) Repealed by No. 53 of 1904, *infra*, p. 225.

**1902** (i) Acts passed—79: Public, 76; Private, 3.

**Creditors' Relief.**—The Creditors' Relief Act (No. 17) provides that there shall be no priority among execution creditors. Where a sheriff has levied money upon an execution against the property of a debtor, he shall enter notice thereof in an official register; and the money shall thereafter be distributed *pro rata* amongst all execution creditors and other creditors whose writs or certificates given under this Act were in the sheriff's hands at the time of the levy, or who shall deliver their writs or certificates to the sheriff within one month from the entry of notice.

Persons to whom wages are due by the execution debtor shall be entitled to be paid not exceeding three months' wages in priority to the claims of the other creditors, and shall be entitled to share *pro rata* with such other creditors as to the residue of their claims.

**Evidence.** (k)—The Evidence Act Amendment Act (No. 22) amends the principal Act (l) with regard to the production of certified copies of documents deposited or registered in the Land Registry Office, Land Titles Office, and Registries of the Supreme Court and County Court, as *prima facie* evidence without proof of the signature of the registrar, or that the document was so deposited or registered. Any person to whom an oath is administered may swear with uplifted hand in the form and manner in which an oath is usually administered in Scotland.

**Fisheries.**—The British Columbia Fisheries Act, 1901, (m) Amendment Act (No. 26) re-enacts certain clauses of the principal Act dealing with the appointments of a Fishery Commissioner, overseers, etc., fishery leases and licences. Every person working a cannery shall pay three cents per case upon all fish put into cases during the twelve months, and one dollar per ton on dried or salted dog salmon, and one dollar and twenty-five cents per ton on all other fish so preserved.

**Hospital.**—The Hospital Act (No. 33) provides that no aid shall be paid to any hospital which has not been approved by the Lieutenant-Governor in Council. The amount of aid to be paid is regulated by a scale based upon the total number of days' treatment in a year.

No money is to be paid to any hospital where small-pox patients are admitted, unless it is certified to have a distinct and separate ward or building for the exclusive accommodation of patients with small-pox.

**Immigration.**—The British Columbia Immigration Act (No. 34) (n) renders unlawful the immigration into British Columbia of any person

(i) Contributed by Walter Peacock, Esq.

(k) See *supra*, p. 209, and *infra*, p. 223.

(m) See *supra*, p. 215.

(l) R.S. B.C. No. 71.

(n) See *infra*, p. 221.



who shall fail himself to write out and sign in the characters of some language of Europe an application to the Provincial Secretary.

**Mutual Fire Insurance.**—The Mutual Fire Insurance Companies Act (No. 35) provides for the incorporation of mutual fire insurance companies with powers to sue and be sued under the corporate name, to purchase, lease, convey, or mortgage any real or personal property required for the business of the company, to invest funds on mortgage of real estate or in provincial or municipal bonds or other securities, to appoint officers of the company, and to make bylaws not inconsistent with the Act. Such powers are forfeited if there are not within one year from the date of incorporation, except for the purpose of winding up, mutual insurance policies in force to a total amount of \$300,000, or at any time that such insurance policies shall have become less than \$300,000, or on the company becoming insolvent.

**Labour Regulation.**—The Labour Regulation Act (No. 38) (*o*) prohibits the employment on works carried on under franchises granted by private Acts of any workman who shall fail himself to read this Act in a language of Europe.

The Subsidised Works Labour Regulation Act (No. 39) provides that subsidies shall not be paid until an agreement has been executed and security furnished by the employer as to the employment of labour upon such terms and conditions as to the Lieutenant-Governor in Council shall seem meet and proper.

**Master and Servant.**—The Master and Servant Act Amendment Act (No. 44) provides that in cities of more than three thousand inhabitants an employer of labour shall accede to a request in writing by thirty or more of his workmen to deduct from their wages a sum to provide for medical attendance by a practitioner whom each may select, and no other sum shall be deducted from the wages of a workman by a master for medical attendance.

**Minerals.**—No. 46, which amends the Mineral Act (*p*), permits adverse rights under the Act to be tried by jury.

The Iron Placer Act (No. 49) enables the Gold Commissioner with the sanction of the Lieutenant-Governor in Council to make leases of unoccupied Crown land for iron placer mining, and states the formalities to be observed by the applicant.

**Youths' Protection.**—The Youths' Protection Act Amendment Act (No. 51) provides that liquor shall not be sold to youths under eighteen, instead of sixteen as heretofore, nor shall youths of such age be allowed to remain in bar-rooms. Tobacco must not be sold to nor must it be used on the public streets by youths under sixteen.

**Aliens.**—No. 53 prohibits aliens from voting at municipal elections.

(*o*) See *infra*, p. 221.

(*p*) R.S. B.C. No. 135.

**Railways.**—The Railways Acts Amendment Act (No. 57) repeals the clauses in fourteen Acts passed during 1901 incorporating railway companies which prohibited the employment of aliens on the said railways.

**Redistribution.**—The Redistribution Act (No. 58) provides that for returning the number of members of the Legislative Assembly, the province shall be redistributed into thirty-four electoral districts, the boundaries of which are defined in the Act. With the exception of Victoria City, which is to return four members, Vancouver City five members, and Cariboo two members, each electoral district will return one member. The former registers are to be cancelled from the coming into force of the Act.

**Manufacture.**—No. 61 is an Act to encourage the manufacture of steel rails in Canada, and provides that subsidised railways shall use rails and spikes manufactured in Canada: provided always that the necessary rails and spikes are procurable in Canada, at a price not greater than the open market price in Great Britain or the United States for rails of a similar make and quality, with the current freight rates from the place of shipment to the place where required in British Columbia added thereto.

**Live Stock Breeders.**—The Live Stock Breeders' Protection Act (No. 62) provides for the registration in the Department of Agriculture of certificates of breeding of any live stock, comprising horse, mare, bull, or cow, and the publication of certificate shall be necessary to enable an owner who has advertised to collect any fees for the services of male live stock.

**Assessment.**—The Assessment Act Amendment Act (No. 64) (*q*) exempts from taxation under s. 10 of the principal Act (*r*) annual gross output of placer and dredging mines to the value of \$2000.

**Timber Measurement.**—The Timber Measurement Act (No. 65) provides for the appointment of a Supervisor of Log Scaling to supervise the official scalers appointed under this Act to scale timber on which royalty is due to the Crown; and penalties are inflicted for sawing unscaled timber.

**Trade Unions.**—No. 66 provides that no trade union shall be liable in damages for any wrongful act in connection with any strike, lock-out, or labour dispute, unless the members of such union or its governing body acting within the authority of the rules shall have authorised such wrongful act. Trade unions shall not be liable for communicating certain information and employing fair argument to induce workmen

(*q*) See *supra*, p. 212, *infra*, p. 221; and Repealing Act, No. 53 of 1904, *infra*, p. 225.

(*r*) R.S. B.C. No. 179.



not to renew contracts nor for publishing certain information respecting strikes.

**Public Works Wages.**—The Public Works Wages Act (No. 71) provides for the payment out of securities held by the Crown of wages of employees of contractors or sub-contractors in the construction of a public work who have made default in such payment.

**Workmen's Compensation.**—The Workmen's Compensation Act (No. 74) provides for the liability of certain employers, comprising undertakers on or about a railway, factory, mine, quarry or engineering work, or on any building exceeding forty feet in height, to pay compensation to their workmen for injuries, provided that (1) the workman is disabled for at least two weeks from earning full wages at his usual work; (2) when the injury is caused by the personal negligence of the employer, the workman may at his option claim compensation under this Act, or take the same proceedings as were previously open to him; (3) where the injury is due to the serious misconduct or neglect of the workman, the compensation shall be disallowed. Contracting out is prohibited, but an employer may contract to substitute for the provisions of the Act the provisions of any scheme certified by the Attorney-General to be not less favourable to the general body of workmen and their dependants. The scale and conditions of compensation are contained in the first schedule to the Act.

**Deceived Workmen.**—The Deceived Workmen's Act (No. 75) makes it unlawful for any person doing business in the province to entice workmen into the province by deceptive representations as to condition of the labour market; and any workman who has so been enticed shall have a right of action for recovery of damages occasioned by such representations. On the other hand, it is unlawful by making deceptive representations to prevent an employer from obtaining the services of workmen.

**Youthful Offenders.**—The Youthful Offenders' Act (No. 76) provides that a parent or guardian may be made responsible for the offences of children between the ages of seven and fourteen years. Instead of committing a child between such age on conviction to prison, the magistrate may commit him into the custody of some fit person.

**1903 (s)**

Acts passed, 43—Public, 29; Private, 14.

**Illegitimate Children.**—The putative father is made responsible by No. 6 for the supply of necessities to the illegitimate child, but the mother's testimony as to the father's identity must be supported by other evidence.

(s) Contributed by C. E. A. Bedwell, Esq.

**Immigration.**—An educational test is imposed by No. 12 upon all immigrants coming into the province. The Act appears only to alter the machinery for carrying out No. 34 of 1902, (*t*) but no reference is made to the earlier Statute.

**Labour Regulation.**—Similarly No. 14 appears to be similar in tenor to No. 38 of 1902. (*u*) Heavy penalties are imposed both on employers and workmen for any infringement.

**South African Contingent.**—No. 51 of 1901 (*x*) is extended so as to extend to all who served in any capacity in South Africa, and an additional grant of land is made to those volunteers who respond twice to the call.

**Assessment** (*y*).—No. 24 is a long Act making numerous modifications in the mode of assessment and the levying of taxes on Crown lands.

**Watercourses.**—The object of No. 28 is to prevent the obstruction of watercourses by any means whatsoever.

**1904** (*z*)            Acts passed, 62—Public, 56 ; Private, 6.

**Agricultural Societies.**—No. 2 requires the consent of the Lieutenant-Governor in Council to the incorporation of an agricultural or horticultural society and limits the public grant to double the amount of the subscriptions.

**Medical Practitioners** (No. 4).—No action is to be brought against the Council by a member or ex-member of the profession for anything done *bonâ fide* under the Act, but a right of appeal is given from the decision of the Council to a judge of the Supreme Court of the province.

**Attachment of Debts** (No. 7).—This provides machinery—analogous to our own garnishee proceedings—for enabling a judgment creditor to attach “debts, obligations, and liabilities” owing or accruing from a third person—garnishee—to the judgment debtor. If the garnishee disputes the debt, an issue may be directed. Similar proceedings may be taken against a partnership, firm, or company.

**Bills of Sale** (No. 8) (*a*).—Mortgages and debentures by companies covering land as well as chattels are exempted from registration as bills of sale when duly registered under the Land Registry Act. Bills of sale of goods in a city with a county court office must be registered within five days. If an action is instituted against the grantor of

(*t*) See *supra*, p. 217, and *infra*, p. 224.

(*u*) See *supra*, p. 218.

(*x*) See *supra*, p. 216.

(*y*) See *supra*, p. 219, and Repealing Act, No. 53 of 1904, *infra*, p. 225.

(*z*) Contributed by Edward Manson, Esq.

(*a*) Repealed by No. 8 of 1905, *infra*, p. 226.



a bill of sale within sixty days from registration, and judgment entered for plaintiff, the bill of sale is to be void. Agreements for future advances secured by mortgages on chattels must be accompanied by an affidavit of the mortgage verifying the agreement and its good faith.

**Insectivorous Birds** (No. 9).—This is the British Columbian birds' charter. It makes it unlawful to shoot, kill, or capture "any bird whatever" or to take or destroy any nest, young, or egg of "any bird whatsoever." The only outlaws are crows, magpies, hawks, owls, woodpeckers, and blue jays, and birds which may be shot under the Game Protection Act, 1898 (*b*). The scientist may, however, get a permit, and the schoolboy's pastime is not touched: the Act is not to apply to children under fifteen years of age.

**Steam Boilers** (No. 10).—This defines what steam plant a third-class engineer may take charge of and classifies engineers.

**Companies.**—No. 12 amends the Companies Act, 1897.

The directors of every company are once at least in every year after setting apart any reserve to declare a dividend of the whole of the accumulated profits and pay the same to the shareholders on demand. They—directors—must convene an extraordinary general meeting at any time on requisition of holders of one-tenth of the issued capital, and must keep specified accounts, which are to be open to the inspection of members. They must also prepare and lay before the company in general meeting every year a balance-sheet containing specified particulars. Auditors are to be appointed by the company at each annual general meeting and paid, and the rights and duties of such auditors are defined. A power of borrowing for the objects of the company is given to all companies under the Companies Act of the Province, 1897, exercisable by the directors subject to any restrictions imposed by the articles of association. This was overlooked when the English Companies Act of 1862 (*c*) was drafted.

**County Courts** (No. 14).—This empowers a county court judge to appoint a receiver and grant an injunction within his territorial jurisdiction in any action sent or proceeding in the Supreme Court.

**Judicature** (No. 15) (*d*).—This is an Act of one hundred and thirteen sections dealing with the constitution and procedure of the Supreme Court of the Province and the administration of justice. Law and equity are to be concurrently administered and equitable counter-claims recognised. In the administration of estates all creditors are to rank equally, and provisions as to equitable waste, merger, and

(*b*) See *supra*, p. 201.

(*c*) 25 & 26 Vict. c. 89.

(*d*) See *supra*, p. 202.

the application of the Statute of Limitations to trustees and many other matters analogous to those of the English Judicature Act, 1873, (*e*) are adopted. Other matters dealt with are judicial districts, local judges, district registries, suitors' funds in court, solicitors, sittings and circuits, trial and judgment, references, evidence, official stenographers, appellate courts, fees and rules of court.

**Sanitary Drainage Companies** (No. 16).—These companies must submit their plans to the Provincial Board of Health, and when these are approved, are invested with all the powers for the expropriation of land necessary for the purposes of their undertaking.

**Elections** (No. 17) (*f*).—This is an Act of three hundred sections, constituting a complete code for the conduct of elections of members of the Legislative Assembly of the province and the trial of election petitions. Every agent must be authorised in writing, secrecy in voting is strictly maintained, and bribery and undue influence have very wide definitions. No maximum is fixed for a candidate's election expenses.

**Evidence** (No. 18) (*g*).—A slight amendment in the law of evidence. Whenever nationality or race has to be proved, the Court or jury may infer it from the appearance of such person.

**Frauds** (No. 20).—This is the Statute of Frauds (*h*) re-enacted with some statutory additions—consideration for guarantee, (*i*) and representations as to credit. (*k*)

**Fish and Game** (No. 21) (*l*).—It is made unlawful to take trout between November 15th and March 25th.

The Lieutenant-Governor in Council may declare a close season for deer, elk, wapiti, moose, caribou, beaver, mountain sheep, and mountain goat.

**Prisons and Police** (No. 22).—This provides for the appointment by the Lieutenant-Governor in Council of a superintendent of police for the province, of chief constables and constables. Power is given to any justice of the peace to appoint special constables for an emergency. Rules may be made by the Lieutenant-Governor in Council for the management and inspection of prisons.

No spirituous or fermented liquors are on any pretence to be brought into a prison, nor is any tobacco, opium, snuff, or cigars to be given to any convict. The Superintendent of Prisons is to make an annual report to the Attorney-General of the province as to the number of prisoners received and liberated, their ages, calling, country, crimes,

(*e*) 36 & 37 Vict. c. 66.

(*g*) See *supra*, p. 217.

(*i*) 19 & 20 Vict. [Imperial], c. 97, s. 3.

(*l*) See *infra*, p. 226.

(*f*) See *supra*, p. 197.

(*h*) 29 Car. II. c. 3.

(*k*) 9 Geo. IV. c. 14, s. 6.



etc. Prisoners may be employed outside the gaol, but must be under strict supervision.

**Health** (No. 23).—A Commissioner may be appointed to investigate the sanitary condition and surroundings of any place and the cause of any disease or mortality. Logging and mining camps are also to be inspected.

**Horticulture** (No. 24).—Henceforth no person is to sell fruit-trees, plants, or nursery stock without a licence for such business, to be given for the year only upon an indemnity bond. The reason of this is the danger arising from infected fruit-trees and plants.

**Immigration** (*m*) (No. 26).—No person—with certain specified exceptions (s. 4)—is to be allowed to immigrate into the province who cannot write out at dictation and sign a passage of fifty words in a European language. A prohibited immigrant found in the province is liable to six months' imprisonment. Assisting prohibited immigrants to contravene the Act is punishable with a fine of \$500. Masters of vessels are to furnish lists of their passengers and allow inspection.

**Land** (No. 30).—Timber leases for a period not to exceed twenty-one years may be obtained on public competition by the tenders of the highest cash bonus. The Act also regulates the mode of obtaining special licences to cut timber and the terms of such licences. A lien for royalties is given to the Crown.

**Mechanics' Lien** (No. 35).—No fees in stamps or money are to be payable to any judge or officer in an action brought to realise a lien under the Mechanics' Lien Act. A limit is also imposed on costs.

**Coal Mines** (No. 37).—A person desirous of obtaining a licence to prospect for coal or petroleum must place at one corner of the land to be applied for a post four inches square and four feet high inscribed A.B. and N.E. Corner. A five years' lease may be granted to the prospector on satisfactory evidence of his having found coal.

**Coal Mines Regulation** (Nos. 38, 39, and 40).—No person is to be employed underground in any coal mine for more than eight hours from bank to bank—*i.e.* pithead—in every twenty-four hours. No person is to be employed in a mine with only a single shaft. Underground workings are to be in charge of an overman and shift boss.

A penalty is imposed for working a mine without a manager. Strict rules are laid down as to lamps and lights, smoking, explosives, and blasting.

There are also provisions for the examination of persons to constitute the Board of Mines.

**Motors** (No. 41).—Every motor owner is to pay a registration fee of

(*m*) See *supra*, p. 221, and *infra*, p. 227.

\$2 for each motor and obtain a permit. The permit is to be carried and exposed on the motor and the number conspicuously affixed on the back in figures not less than three inches in height. Every motor is to carry a proper alarm bell, gong, or horn, and a lighted lamp or lamps after dusk. No motor is to be run upon any public highway within any city, town, or incorporated village at a greater rate of speed than ten miles an hour, or upon any public highway outside any city, town, etc., at a greater speed than fifteen miles. There is to be no racing. Persons in charge of motors are to take every precaution not to frighten horses and to ensure safety.

**Laying Poison** (No. 44).—Any person placing poison on his land for the destruction of noxious animals or any purpose whatever is to give notice to all families residing within two miles by posting up notices in the five most public places within twenty-four hours.

**Sale of Goods** (No. 46).—By this Act certain goods and chattels, though affixed to the realty, are not to become part thereof, but the owner of the realty may retain the goods on paying the amount due.

**Railways** (No. 52).—Railways and railway property within the limits of municipalities are to remain subject to provincial taxation.

**Taxation : Property and Income** (No. 53) (*n*).—This is an Act of one hundred and eighty-one sections dealing exhaustively with taxation of real and personal estate and income, including the income of corporations, the mode of assessment, and the payment and collection of taxes.

## 1905 (*o*)

Public Acts, 58 ; Private, 12.

**Animals** (No. 1).—Vicious dogs are summarily dealt with here. If a person has a dog in his possession which has within six months bitten or attempted to bite any person, a magistrate may, on complaint, order the dog to be killed.

**Medical Practitioner** (No. 6).—A penalty, \$25 to \$100, is imposed on a registered medical practitioner contracting with an unregistered person to practise medicine or surgery with him.

**Land Surveyors** (No. 7).—Land surveying has become an important business in the province. The object of this Act is to organise the profession. The existing body of land managers are incorporated with a Board of Management—to be elected annually—whose functions are to maintain discipline and honour among the members, grant certificates of membership after examination, make bylaws, etc. The conditions of

(*n*) See *supra*, p. 216, and *infra*, p. 228.

(*o*) Contributed by J. A. Simon, Esq., K.C., M.P.



admission to practise are—the candidate must be (1) a British subject, (2) twenty-one years of age, (3) must have passed an examination in the required subjects, following on three years' articles. The three years may be reduced to one where the candidate has a diploma from a British university or college.

**Bills of Sale** (No. 8) (*p*).—This Act consolidates the law on this subject. A novel provision is that every creditor of the grantor of a bill of sale may require the grantee to furnish him with a full statement of the accounts between the grantor and grantee. Trade machinery is to be deemed personal chattels.

**Commercial Travellers** (No. 10).—Commercial travellers not resident or domiciled in the province are required to take out a licence. The licence does not empower the holder to carry a stock of goods for sale.

**Insurance Companies** (No. 11).—No extra-Provincial Insurance Company is to undertake any contract of insurance within the province without a licence for that purpose. The fee is \$250.

**Companies' Mortgage Registration** (No. 12).—This provides for public registration of a company's mortgages and charges on the lines of the English Companies Act, 1900. (*q*) Unfortunately, here as in the English Act the list of mortgages and charges requiring registration is not exhaustive.

**County Courts** (No. 14).—This is a very elaborate Act of one hundred and eighty-five sections regulating the jurisdiction and procedure of county courts in the province.

**Wigs in Court** (No. 16).—"The wearing or use of the customary official wigs is hereby prohibited in any Court in this Province."

**Judges** (No. 17).—The qualification for appointment to the Bench of the Supreme Court has been ten years' standing at the Bar. Five of these ten years must now have been actively spent in practice at the Bar of the province.

**Explosives** (No. 22).—Every parcel containing any explosive (except gunpowder) for mining, blasting, or farming operations must be stamped with the date of manufacture and the percentage of explosive material.

**Fraudulent Preference** (No. 24).—There is no Bankruptcy Act in the province. Its place is partially supplied by such an Act as this. A "fraudulent preference" is defined as one which "has the effect of giving a creditor a preference." This eliminates the psychological element which has caused so much difficulty under the English Act by the use of the words "with a view to prefer."

**Game Protection** (No. 25) (*r*).—The law on this subject is amended in a number of particulars.

(*p*) See *supra*, p. 221.

(*q*) 63 & 64 Vict. c. 48, ss. 14, 15. See *supra*, p. 56.

(*r*) See *supra*, pp. 201, 223.

No person not a resident of or domiciled in the province (with a saving for Army or Militia officers) is to hunt, kill, or take game without a licence—\$50—from the Game Warden.

Persons and conveyances may be searched for animals, birds, eggs, or fishes unlawfully obtained.

**Highways** (No. 26).—Any roads on which public money has been spent are to be declared public highways. Any public highway with less than thirty-three feet each way from the centre may be enlarged to such width.

Drains are only to be constructed with the consent of the Chief Commissioner of Lands and Works.

**Horticultural Board** (No. 27).—The powers of the Board as regards fruit pests are extended to hops, grain, peas, beans, roots, tubers, and seeds. No person is to sell fruit-trees, plants, or nursery stock in the province without a licence under the Act.

**Immigration** (No. 28) (*s*).—Immigrants unable to write when required in some European language are (with certain exceptions) prohibited. Prohibited immigrants entering the province are liable to six months' imprisonment. Masters of vessels are to give information and afford facilities.

**Landlord and Tenant** (No. 32).—Where a landlord distrains for rent on goods in the possession of the tenant and the goods are held by the tenant under a duly filed agreement for hire, contract, or conditional sale, the landlord is only to sell the interest of the tenant in the goods.

**Public Schools** (No. 44).—This is a consolidation Act of one hundred and twenty-eight sections dealing with organisation of public schools.

**Trustees and Executors** (No. 51).—This is an important Act adopting a number of rules analogous to those contained in the English Trustee Act, 1888, (*t*) as to the right of trustees to plead the Statute of Limitations, improper advances on mortgage by trustees, their right to indemnity, their retirement, the vesting of trust property on the appointment of new trustees, etc. Last, not least, the Act gives the Court the power possessed by the Court in England under the Judicial Trustees Act, 1896, (*u*) to relieve trustees from the consequences of a breach of trust where they have "acted honestly and reasonably and ought fairly to be excused."

**Unclaimed Moneys** (No. 52).—Moneys deposited in the Treasury of the province, and unclaimed for ten years, are to form part of the Consolidated Revenue of the province, but claimants who can prove their title may obtain payment.

(*s*) See *supra*, p. 224.

(*t*) 51 & 52 Vict. c. 59.

(*u*) 59 & 60 Vict. c. 35.



**Wages of Deceased Workmen** (No. 58).—This is a “widows’ Act.” Under it “the wages earned by a workman during the period of three months before, and owing to him at the time of his death, shall be payable to the widow, if any, of such deceased workman, free from debts of such deceased.”

**1906** (*x*)      Acts passed—68 ; Public, 48 ; Private, 20.

**Assessment** (No. 1) (*y*).—This Act, among other things, substitutes a new scale for the taxation of income. Where the taxable amount does not exceed \$2000 the scale is  $1\frac{1}{2}$  per cent.; over \$2000 and under \$3000,  $1\frac{3}{4}$  per cent.; over \$3000 and under \$7000, 3 per cent. A new scale is also established for real property other than wild land, coal or timber land. The Act also deals with the procedure on forfeiture of mineral or placer claims.

**Dairy Associations** (No. 2).—A meeting of any association of this kind is to be held in the first three months of each year, for election of a president, vice-president, and Board of not less than five directors. The Lieutenant-Governor in Council is given power to appoint inspectors of practical experience in dairying. Such inspectors are to visit creameries and cheese factories, to advise and assist the owners as to the making and marketing of their products, to inspect stables, stock, dairies, and utensils, for the purpose of ensuring cleanliness, and, if necessary, to condemn any dairies found to be unfit.

**Life Boats** (No. 4).—This incorporates the first Life-boat and Life-saving Association of British Columbia, which is to consist of all persons contributing not less than \$1 to the objects of the Society. Branch Societies may be formed.

**Live Stock Breeding** (No. 5).—“Live stock” in this Act includes horses, cattle, sheep, pigs, goats, donkeys, dogs, turkeys, geese, ducks, fowls, pigeons, and rabbits. With a view to improve the breed of such “live stock” the Lieutenant-Governor in Council is given power to grant a charter of incorporation to “The Stock-breeders’ Association of British Columbia.” The Association may hold exhibitions of live stock and agricultural implements, employ judges, lecturers, and instructors, award prizes, and keep a bureau for the collection and dissemination of information. Rules may be made for excluding gambling, huckstering, circus and mountebank performances from the meetings of the Association.

**Land Surveying** (No. 6).—A number of amendments of detail are made in the constitution of the British Columbia Surveyors of Land Corporation, relating mostly to rating and the registration of members.

(*x*) Contributed by J. A. Simon, Esq., K.C., M.P.

(*y*) See *supra*, p. 225.

**Companies** (No. 10).—The provisions of the Companies Act, 1900 (z) (United Kingdom) (since amended), as to the registration of mortgages and charges by a company are here adopted for British Columbia, *mutatis mutandis*. The Act applies to Extra-Provincial Companies carrying on business within the province.

**Distress** (No. 16).—When a distress is levied for taxes justly due, or any penalty incurred, and any irregularity is committed by the party distraining, the distress is not henceforth to be deemed unlawful, but the party aggrieved may have his remedy by action for damages.

**Land Registration** (No. 23) (a).—This is the most important enactment of the year. It extends and systematises the registration and transfer of land throughout the province. In addition to the existing land registers, district registers are to be established, with Examiners of Titles. Every person claiming to be registered as owner in fee is to apply to the registrar in a prescribed form and deposit his title deeds—accompanied in certain cases with maps and plans—with the registrar, and the registrar, if satisfied that “a good safe-holding and marketable title in fee simple” has been established, is to register the applicant in the “Register of Indefeasible Fees.” If not so satisfied, he is to refer the application to an Examiner of Titles, who, after examination, may direct the registrar to register the title as an Indefeasible Fee or as an Absolute Fee after notices given, or may direct the registrar to refuse registration. An “absolute fee” is defined as meaning the “legal ownership of an estate in fee simple.” Certificates in an appropriate form are to be issued to the registered holders of “Indefeasible Fees” and “Absolute Fees.” In the case of an Indefeasible Fee no application for registration of any estate or interest in the land or any part of it is to be entertained unless as a “charge” on land. “Charge” is defined as meaning “any less estate than an absolute fee or any equitable interest, and is to include any incumbrance, Crown debt, judgment, mortgage, or claim to or upon any real estate.” Any “charge” may be registered, provided there has been registration of the fee, absolute or indefeasible, but not a mere equitable mortgage or lien by deposit of title deeds. No entry of trusts is to be made in the register where two or more persons are interested in distinct interests or estates in the same land by way of remainder or otherwise. The first owner of an estate of inheritance is to be registered as the owner of a fee, and the interests or estates of the others are to be registered by means of a charge or charges. In case of infants and persons under disability the Court may enter a charge on their behalf. Any person interested may, by leave of the registrar, lodge a caveat

(z) 63 & 64 Vict. c. 48. See *supra*, p. 56.

(a) See *supra*, p. 198.



against transfer. Registration of a charge is to operate as notice to any person dealing with the land.

On any transfer the transferee is to be registered and a new certificate issued to him. Mistakes or misfeasances by the registrar are to be made good out of an Assurance Fund which is to be formed by deducting 20 per cent. of the fees on registration and accumulating the same with interest.

The fees appear very moderate. Thus, the fee for registration of any absolute or indefeasible title is \$1; of a certificate of indefeasible title, \$5; for registration of a charge, \$1; for a certificate of search, \$1.

**Crown Lands** (No. 24).—Any person under the amending Act, being the head of a family, a widow, or single man over eighteen years of age, and a British subject or an alien who has formally declared his intention of becoming a British subject, may record any tract of unoccupied and unreserved Crown lands not exceeding one hundred and sixty acres in extent; but only for *bonâ fide* agricultural purposes.

Holders of timber leaseholds or licences may obtain a right-of-way across any Crown-granted lands for the purpose of constructing chutes, flumes, or roads.

**Ancient Lights** (No. 25).—It is a somewhat startling provision which is embodied in this Act: "No person shall acquire a right by prescription to the access of light to or for any building."

**Liquor** (No. 26) (b).—Only three licences to sell liquor by retail are to be granted for any locality unless the population exceeds 500, and thereafter only one additional licence for every additional 1000 population.

**Municipalities** (No. 32).—This is a Consolidation Act for standardising Municipal Government. It declares of whom municipal councils are to be composed, how they are to regulate their business, what bylaws a municipality may make, and how it may enforce them; its duty in regard to the poor and destitute; its capacity to contract debts, to borrow on the security of water, gas, or electric rates; the audit of its accounts, the levying of rates, the amounts chargeable for traders' licences, liquor licences, police magistrates, highways and bridges, public parks, and all the other necessities and amenities of civic life.

**College for Learning** (No. 38).—The Royal Institution for the Advancement of Learning of British Columbia is hereby incorporated to establish a college for the higher education of men and women, under the name of the McGill University College of British Columbia, and for providing courses of study leading to degrees of McGill University.

**Timber** (No. 43).—Official scalers are appointed for the measurement of timber and saw logs. The fees are a lien on the timber.

(b) See *supra*, p. 210.

**Wild Horses** (No. 48).—On the written request of at least five owners of horses ranging upon the public lands of any district, a licence may be issued by the Government Agent to any person named authorising him to kill horses running wild upon the public lands.

**1907** (c)      Acts passed, 62—Public, 47; Private, 15.

**Court of Appeal.**—No. 10, “the Court of Appeal Act,” constitutes a Provincial Court of Appeal consisting of a Chief Justice and three other judges to be called Justices of Appeal. In this Court of Appeal are to be vested all the powers and jurisdiction, civil and criminal, of the Supreme Court of British Columbia sitting as a full Court.

The constitution of Provincial Courts is within the exclusive power of the Provincial Legislation, (d) but the appointment of Provincial Judges is in the hands of the Governor-General, and their payment has to be provided by the Parliament of Canada. (e) Consequently, this Provincial Statute can only become effective upon the appointment by the Federal Government of the necessary additional judges.

**Protection of Children.**—No. 13 is “the Curfew Act,” the full title of which is “An Act for Regulating the Hours during which Children of tender years may be on the Streets without their Parents or Guardians.” A “child” for this purpose means any person, male or female, under the age of fourteen years. Upon a petition signed by four-fifths of the inhabitants (over twenty-one years of age) of any community of not less than one hundred adults residing in close proximity to each other, the Lieutenant-Governor in Council may erect the community into a “Curfew District.” Thereupon it shall be unlawful for any “child” to be on the streets or roads within the Curfew District after 9 p.m. without lawful excuse unless accompanied by a parent or guardian, unless the child is employed in industrial occupations. For breach of the Act, the “child” may be convicted before a justice of the peace and fined \$5. There is no punishment for the parent or guardian who lets the child remain in the streets.

A similar law already exists in Ontario. No such proposal, however, was included in the Children’s Act, 1908, (f) of the Imperial Legislature.

**Drainage.**—No. 14 is an Act of forty-one sections and eight Forms in the Schedule, called “the Ditches and Watercourses Act,” providing for the construction and maintenance of ditches or drains by agreement between land-owners, and for the adjustment of differences, failing

(c) Contributed by J. A. Simon, Esq., K.C., M.P.

(d) British North America Act, 30 & 31 Vict. c. 3, s. 92.

(e) *Ibid.*, ss. 96, 100.

(f) 8 Edw. VII. c. 67.



agreement, by an engineer appointed by the municipality with a right of appeal from his award to a county court judge.

**Franchise.**—No. 16 amends the Provincial Elections Act, and provides that no Hindu (*i.e.* no “native of India, not born of Anglo-Saxon parents, whether a British subject or not”) is to be placed on the Register of Voters.

**Forest Fires.**—No. 20 amends the “Bush Fire Act” by substituting for s. 7 of that Act the following:—

All locomotive engines used on any railway which passes through, or any stationary engine used in, any fire district, or part of a fire district, shall, by the company or person using the same, be provided with and have in use the most approved and efficient means used to prevent the escape of fire from the furnaces or ashpans or smoke-stacks of such locomotive or stationary engines, and the company or person shall see that same are in perfect order at least once a day.

**Oriental Immigration.**—No. 21A is “An Act to Regulate Immigration into British Columbia,” which passed the Provincial Legislation but assent to which the Lieutenant-Governor reserved. It contained a very curious misprint in the final words of its principal clause, s. 4, which runs as follows:—

The immigration into British Columbia of any person, who, when asked to do so by the officer appointed under this Act, shall fail himself to write out and sign, in the English language, or any language of Europe, an application to the Provincial Secretary of the Province of British Columbia, to the effect of the form set out in Schedule B to this Act annexed, as well as read in English, or any language of Europe, any test submitted to him by the office appointed under this Act shall be *lawful*.

The constitutional and international difficulties to which this Act threatened to give rise caused the mistake of “lawful” for “unlawful” to be overlooked. In the following Session (No. 23 of 1908) the Provincial Legislature passed into law identically the same Act, with the substitution of “shall be unlawful” for “shall be lawful.”

**Eight Hours’ Day.**—No. 23 is the Labour Regulation Act, and provides that no one shall be employed in or about any smelter for more than eight hours in twenty-four, between midnight and midnight; the employer is liable to a penalty not exceeding \$100 nor less than \$20 for each workman employed for a longer period, and the workman to a similar penalty.

**University Endowment.**—No. 45 provides that the Lieutenant-Governor in Council may set apart by way of endowment to the University of British Columbia lands in the province not exceeding 2,000,000 acres.

### 3. MANITOBA.<sup>(a)</sup>

1898

Acts passed, 60.

**Bake-shops** (No. 2).—The Bake-shops Act (*b*) provides that bakeries must be constructed so as not to be detrimental to the health of persons working therein, and must be kept at all times in a clean and sanitary condition. The sleeping places of the employees must be separated from the shop, and no employer shall knowingly require, permit, or suffer any person to work in his bake-shop who is affected with consumption of the lungs, or with scrofula, or with any venereal disease, or with any communicable skin disease. And every employer is required to maintain himself and his employees in a clean and healthy condition while engaged in the manufacture, handling, or sale of bread-stuffs. Every offence is punishable, and the third offence may entail six months' hard labour.

**Destitute Children** (No. 6).—The Children's Protection Act provides for the appointment of a superintendent of neglected children, whose duty it is to encourage and assist in the establishing of societies for the protection of children from neglect and cruelty; and he has full power to see that the provisions of the Act are complied with.

Children (boys if under fourteen and girls if under sixteen) come within the purview of the Act when found under the following conditions: begging in the streets or wandering about at a late hour; or sleeping at night in the open, or in barns and outhouses; or found associating with a thief, drunkard, or vagrant; or who, by reason of the neglect or drunkenness or other vices of their parents, are suffered to grow up without salutary parental control or education, or in circumstances exposing them to idle or dissolute lives, or are found in disorderly houses; or are destitute orphans, or deserted by lawful parents, or found guilty of petty crimes, or likely to develop criminal tendencies if not removed from their present surroundings. Children coming within any of the above descriptions may be arrested, and, if the judge before whom they appear so order, may be put under the guardianship of a society whose duty it is to find them suitable foster-homes.

**Compensation for Death** (No. 11).—This enactment amends the Act respecting compensation to families of persons killed by accident by allowing the persons who are to receive the compensation to maintain actions in their own names in certain eventualities.

**Administration** (No. 15).—This enactment amends the Devolution

(a) Contributed by H. Stuart Moore, Esq.

(b) See *infra*, p. 235.



of Estates Act, and empowers the administrator to mortgage real estate for payment of debts, taxes, or other incumbrances; to release equities of redemption, and to mortgage for the purpose of raising money to pay for any necessary and proper repairs, or for improvements to real estate.

**Evidence.**—No. 17 amends the Manitoba Evidence Act to the extent of allowing the Queen's Bench courts to examine witnesses ordered to be examined under a commission issued by any tribunal of competent jurisdiction outside of Manitoba. Such an examination is subject to the same rules as an examination in a cause pending in the Queen's Bench of the province.

**Game.**—No. 19 (c) amends the Game Protection Act, and fixes the close time for grouse from November 15th to October 1st, and also makes it unlawful for any person in any one year or season to kill more than one hundred grouse and prairie chickens, or to kill more than twenty such birds in any one day. The Act also gives complete protection to beaver.

**Liquor** (No. 26).—This enactment amends the Liquor Licence Act by making it obligatory for commercial travellers to have licences when soliciting orders for liquor to be imported into the province. It is also unlawful for licensed houses to put up screens so as to prevent persons seeing into the bar during prohibited hours.

**Lord's Day** (No. 27).—The Lord's Day Act contains provisions making it illegal for any merchant, tradesman, artificer, mechanic, workman, labourer, or other such persons to sell or expose for sale or purchase any goods, chattels, or real and personal property on Sundays, or on such a day do or exercise any worldly labour, business, or work of his ordinary calling; conveying travellers or her Majesty's mails, selling drugs and medicines, and other works of necessity and of charity only excepted.

By the same enactment it is unlawful for any persons to play any game within any enclosure to which persons are admitted on payment of a fee, or to play or run races for reward, or to shoot at targets, marks or other like objects with guns, rifles, or firearms. Public places of amusement may not be opened on Sundays when an admittance fee is charged.

**Workmen's Liens** (No. 29).—The Mechanics' and Wage-Earners' Liens Act consists of forty-eight sections dealing with the liens of workmen. Under this Act any person, unless he signs an express agreement to the contrary, who performs any work or service upon or in respect of, or places or furnishes any materials to be used in the making, constructing, erecting, fitting, altering, improving, or

repairing of any erection, building, land-wharf, pier, bulkhead, bridge, trestle-work, vault, mine, well, excavation, side-walk, paving, fountain, fish-pond, drain, sewer, aqueduct, roadstead, way, or the appurtenances of any of them for any owner, contractor or sub-contractor, has a lien upon such works if his claim amounts to over \$20. The lien, when registered, attaches at the commencement of the work. The Act contains full provisions for the enforcement of the lien, registration, and priority.

**Municipal (No. 31).**—This enactment amends the Municipal Act, and besides making various alterations in sections of the Act, it provides new rules of the road. Vehicles meeting are to drive to the right, giving half the road to the meeting vehicle. Bicycles and tricycles, when meeting a carriage, are to pass to the right, and must be given sufficient room to enable them to do so. Overtaken vehicles are to turn to the left; the overtaking vehicles are to turn to the right. Bicycles and tricycles are to give audible warning before attempting to pass any vehicle.

## 1899

Acts passed—60: Public, 44; Private, 16.

**Anatomy (No. 1).**—The Anatomy Act provides for the supply to medical schools of bodies for the purpose of dissection.

**Bake-shops (No. 2).**—This Act amends the law of 1898 (*d*) by limiting the time a person may be employed in a bake-shop to twelve hours in any one day, or not more than sixty hours in any one week.

**Free Libraries (No. 14).**—The Free Libraries Act provides that when at an annual municipal election the assent of three-fifths of all resident qualified electors is obtained, a free library may be established within that district. The library shall be managed by a board of five members consisting of the mayor or reeve, a councillor, a public school teacher, and two resident electors.

**Stable-Keepers (No. 18).**—This Act gives the right of detention of livery stable-keepers priority over all existing liens affecting any animal detained in his stable.

**Infant Children (No. 21).**—The Maternity Acts render it unlawful for any person, except at a registered house, to receive for hire for the purpose of nursing for a longer period than forty-eight hours more than one infant, or a set of twins, under the age of one year. This Act also provides for the registration and inspection of houses for the reception of infants and maternity boarding-houses. Persons registered under this Act must keep a record of all persons received into their house. Managers of maternity hospitals, infants' homes, or other refuges for women must ascertain and record the antecedents of women

(*d*) See *supra*, p. 233.



coming under their care. All registered houses are under the supervision of the Medical Health Officer and the Superintendent of Neglected Children appointed under the Children's Protection Act. (*e*)

**Electric Lighting and Telephones** (No. 25).—This Act amends the Municipal Act by enabling a town having a thousand inhabitants or upwards to construct or purchase and operate electric light works or telephone lines. Ample provisions are contained in the Act to carry it into effect.

**Companies** (No. 43).—The Joint Stock Companies Winding Up Act provides the necessary machinery for winding up all incorporated companies which are subject to the legislative authority of this province. The company may be wound up either voluntarily or by order of the Court. The procedure to be employed is closely allied to that provided by the Imperial Statutes.

**Wolves** (No. 44).—This Act amends the Act respecting wolf bounty by making it unlawful to kill any wolf by means of poison.

## 1900

Acts passed—78 : Public, 62 ; Private, 16.

**Factories** (No. 13).—The Factories Act regulates the employment of labour in factories. By the Act no girls under the age of eighteen, or boys under the age of sixteen, may be employed in any factory which is deemed by the Lieutenant-Governor in Council to be dangerous or unwholesome. Young girls or women may not be employed for more than eight hours a day, nor for more than forty-eight hours in any week, and they are to have an hour in the middle of the day for meals. They are not permitted to clean any machinery whilst the same is in motion. Inspectors having very full powers are appointed for carrying out the Act.

**Game** (No. 14).—The Game Protection Act consolidating the law on the subject (*f*) fixes the close time for animals and birds, and in certain cases limits the number that may be killed by one person during the year. The eggs of birds protected by the Act are also protected, and non-residents in the province may not sport without a licence. Game guardians are appointed by the Lieutenant-Governor in Council to enforce the Act.

**Innkeepers** (No. 16).—The Hotel-keepers Act gives hotel, boarding and lodging-house keepers a lien on the goods of their guests for board or lodging, and a right to detain and sell such goods. Their liability for the property of their guest is limited to \$200, unless the loss or damage to the goods is caused by the fault or neglect of the keeper or

(*e*) See *supra*, p. 233.

(*f*) Among other Acts it repeals No. 19, of 1898, *supra*, p. 234. It is amended by No. 18, of 1904, *infra*, p. 239.

his servant, or when the goods have been deposited with the keeper for safe custody. To obtain the benefit of the Act a copy must be posted in the office and in all public rooms and bedrooms.

**Liquor Traffic** (No. 22).—The Liquor Act consists of one hundred and twenty-one sections and regulates the licensing of persons who may sell spirits. No person may sell liquor without a druggist's licence, or have liquor on his premises, other than his private dwelling-house, without such licence. No person other than the father, guardian, or physician can sell or give liquor to any minor, and then only for medicinal purposes. No liquor may be consumed or kept at a club.

**Married Women** (No. 27).—The Married Women's Property Act amends and consolidates the law on this subject. By this Act a married women is enabled to hold property as if a *femme sole*, and can devise it by will. She may sue or be sued in contract or in tort, and her husband need not be joined as a party to the proceedings. A married woman is liable for her ante-nuptial debts, and for the maintenance of her children.

**Personal Property** (No. 31).—Every sale of goods not accompanied by an immediate delivery, followed by an actual and continued change of possession, is to be in writing, and must be accompanied by an affidavit of a witness to the due execution thereof, and by an affidavit by the bargainee that the sale is *bonâ fide* and for good or valuable consideration, and not as a fraud on creditors. An agreement or promise for the sale of goods is to be treated as a sale within the meaning of this Act. Mortgages not accompanied by delivery and an actual and continued change of possession must be registered within fifteen days.

**Taxation**.—No. 55 provides for increased revenue by the taxation of corporations. The Act is similar though more detailed to No. 6 of the Statutes of Prince Edward's Island for 1900. (*g*)

**Railways**.—No. 57 imposes a tax on the gross earnings of all railways in the province. Before 1903 it is to be two per cent., and after that date three per cent.

## 1901

Acts passed—62: Public, 54; Private, 8.

**Dairy Produce**.—No. 8 provides that all packages of butter or cheese are to be branded with a registered brand, containing the name and address of the factory or dairy at which it was made and shipped.

**Elections**.—No. 11 provides the machinery for the general election of members to the Legislative Assembly. This Act contains 311 sections. Any person may be elected to the Assembly, except those who are not at least twenty-one years of age, of the male sex, British

(*g*) See *infra*, p. 321.



subjects by birth or naturalisation, registration clerks or revising officers, or persons who have been guilty of corrupt practices. The electors must be males of full age, British subjects by birth or naturalisation, and have resided within the province for one year, and for three months in the electoral division before the commencement of the registration of electors. Persons unable to vote are: judges of the King's Bench or county courts, Indians receiving an annuity or treaty money from the Crown, persons disqualified for corrupt practices, lunatics, prisoners, and any person not a British subject by birth who has not resided in some portion of the Dominion of Canada for at least seven years, unless such person is able to read any selected portion of the Manitoba Act in either English, French, German, Icelandic, or any Scandinavian tongue. The voting is by ballot.

**Statute Law Revision.**—No. 44 empowers the Lieutenant-Governor in Council to issue a commission under the Great Seal to two or more persons to revise and consolidate the laws of the province.

## 1902

Acts passed—77: Public, 56; Private, 21.

**Bankruptcy.**—No. 2 provides that gifts in fraud of, or for preferment of, creditors are void, but assignments for the general benefit of creditors if registered and published in the *Gazette*, are permitted. The proceeds of void transactions have to be distributed amongst the creditors as the Act directs; wages of workmen owing for three months or under take priority to the claims of ordinary creditors.

**Real Property.**—No. 43 in 168 sections amends and codifies the law of real property. The Act provides a new system of land registry to that provided by the Registry Act. The province is divided into land titles districts each containing a land titles office; certificates of title are, with a few exceptions, an absolute bar to all actions of ejectment. Documents transferring land must contain an accurate statement of the estate, interest, or easement transferred, and a memorandum of all leases, mortgages, or encumbrances to which the same may be subject. Transfers must be registered and take priority from the time they were presented for registration. Trusts cannot be entered on the register unless they be in respect of church lands or under a will, in which case the will is deemed part of the certificate of title. Leases and mortgages can also be registered. An assurance fund is created to compensate persons wrongfully deprived of land by the default of any registrar.

**Liquor Traffic.**—No. 44 (i) orders a vote of all electors to be taken to decide whether the Liquor Act shall be brought into force. The result of the voting was: For enforcing the Act, 15,605; against, 22,464.

(i) See *infra*, p. 240.

**1903** Acts passed—73 : Public, 45 ; Private, 28.

**Agriculture.**—No. 6 provides for the branding of cattle and the registration of the brands. In all cases of dispute the brand is *primâ facie* evidence of ownership.

**Elections.**—No. 14 divides the province into forty divisions for electoral purposes.

**Mortgages.**—No. 25 provides that when a mortgagor is entitled to redeem, he may require the mortgagee, instead of giving a certificate of payment or re-conveyance, to assign the mortgage debt and convey the mortgaged property to any third person ; the mortgagor supplying the mortgagee with an abstract of title for that purpose.

The mortgagee may require insurance moneys to be used in making good the loss or damage in respect of which the money was received, or he may require it to be paid towards the discharge of money due under the mortgage. The equity of redemption may be acquired without merger of the mortgage debt.

**Public-Houses.**—No. 33 requires that all hotels, licensed or unlicensed, all lodging-houses, and every house or part thereof where lodgings are provided for money or other consideration, shall be kept in a clean and sanitary condition, properly ventilated and comfortably heated in cold weather. Where gas is supplied to bedrooms, the meter must not be turned off at night. All future buildings are to have ventilators in bedrooms.

**Statutes.**—No. 41 brings into force the Revised Edition of the Statutes, 1902, and provides that if the Revised Edition differs from the Acts, the Acts are to prevail as to matters happening before the Revised Edition came into force ; all questions arising in future are to be governed by the Revised Edition.

**1904** Acts passed—91 : Public, 64 ; Private, 27.

**Elections.**—No. 13 amends the Manitoba Election Act with respect to the revision of the list of voters, the duties of registration clerks, and the maintenance of order at registration sittings. The revision of the list of voters is performed before a board composed of judges of the county courts.

**Game Laws.**—No. 18 makes it an offence under the Game Protection Act (*k*) to export any of the birds or animals mentioned in that Act without the leave of the Minister of Agriculture.

**Insurance.**—No. 27 amends the Manitoba Insurance Act. Insurance against fire cannot be made with any company not licensed under that

(*k*) See *supra*, p. 236. The law is consolidated in No. 30 of 1906, *infra*, p. 242.



Act unless a sum equal to 50 per cent. of the premium be paid to the Provincial Treasurer. If, however, the licensed companies refuse the risk, any other company may take it if 1 per cent. of the premium is paid to the Provincial Treasurer.

**Temperance Reform.**—No. 31 amends the Liquor Licence Act. (*l*) Under the principal Act a person may be interdicted from obtaining spirituous liquors. By the amending Act an interdicted person, if found intoxicated, shall, if required by any person, give full information as to the person or persons from whom he obtained the liquor, and as to the time and place when and where he so obtained it. If he refuses or neglects to do so, he is liable to a fine of not less than \$10 or more than \$50, or to one month's imprisonment. His inability to answer and to give the required particulars is apparently not provided for.

**Safety of Public Places of Amusement.**—No. 45 amends the Public Buildings Act as to ventilation, lighting, and fire appliances in theatres, opera-houses, and music-halls. In future opera-houses and theatres intended to accommodate an audience of 600 persons must have the floor of the auditorium not more than 12 feet above the level of the adjoining street.

**Education.**—No. 47 amends the Public Schools Acts. In certain districts children who reside more than one mile from the school must be conveyed to and fro at the expense of the school trustees.

**Tuberculosis.**—No. 53 provides for the erection and maintenance of a state sanatorium for consumptives. Inmates who are in a position to pay, or who have persons liable to maintain them, must do so. Persons unable to pay can be admitted on the request of the mayor or reeve of a rural municipality, in which case the municipality is liable for the charge.

**Revised Statutes.**—No. 57 corrects the numerous printer's errors in the edition of the Revised Statutes of 1902.

**Trusts.**—No. 62 amends the Manitoba Trustee Act and provides that in the case of the supposed death of a person who afterwards appears, that person is entitled to recover from the administrator the residue of the estate remaining in his hands, and he has a remedy against the recipients from the administrator. Similar provisions apply in the case of intestacies and wills. Executors and administrators are, however, entitled to retain out of the estate their proper costs and charges of its administration.

## 1905

Acts passed—75 : Public, 53 ; Private, 22.

**Evidence on Commission** (No. 11).—This Act amends the Manitoba Evidence Act, and enables the Court of King's Bench to order the attendance of witnesses and the production of documents before any person

(*l*) See *supra*, p. 237, and *infra*, p. 241.

who is authorised by a foreign Court of competent jurisdiction to take evidence on commission.

**Temperance Reform** (No. 22).—This Act makes various small amendments to the Liquor Licence Act.<sup>(m)</sup> It also provides that hotels licensed for the sale of liquors must, in cities, have at least fifteen properly equipped bedrooms, or such a number as the chief licence inspector shall consider adequate to public requirements. Every hotel must have a private sitting-room separate from the bar-room.

**Water Transit** (No. 43).—This defines the rights of the public over inland waterways. Everybody, subject to the provisions of the Act, has the right to float or transmit saw-logs and all sorts of timber and craft down the rivers and creeks during the spring, summer, and autumn freshets. The same right attaches to waters which are not capable of being so used as soon as they are made suitable for that purpose. Persons driving saw-logs, etc., down-stream have the right to go along the banks of the stream to assist the passage of the timber by any of the means usual among lumbermen.

## 1906

Acts passed—123 : Public, 100 ; Private, 23.

**Joint Stock Companies** (Nos. 13, 14).—These Acts amend the Joint Stock Companies Act and, *inter alia*, empower the Lieutenant-Governor in Council to revoke and cancel the letters patent incorporating a company which has failed to make returns for two successive years, and renders liable to a penalty of \$2,000 a person who allows his name to be used as a director, trustee, or member of the board of management in consideration of an allotment or transfer of shares in the Company.

**Supreme Court** (Nos. 17, 18).—The first of these Acts amends, in a number of particulars, the King's Bench Act. It allows service of a subpoena for examination to be made on the parties' solicitor instead of by personal service. The second Act constitutes a Court of Appeal from the King's Bench sitting *en banc* and from the county courts. The Court must consist of three judges. Non-jury cases on the civil side are not to be tried at assizes.

**Fires** (No. 28).—This Act amends the Fires Prevention Act. The Fire Commissioner or his deputy may hold an inquiry into the cause or origin of any fire in the province and ascertain whether it was kindled by design or how otherwise. Such person has the power and authority of a judge of a county court or coroner as to obtaining evidence. He also has the authority and jurisdiction of a police magistrate or provincial constable for the arrest and punishment of persons disturbing the peace at a fire or suspected of stealing property there.

<sup>(m)</sup> See *supra*, p. 237.



The Attorney-General can order an inquiry to be held as to the cause and origin of any fire. The Fire Commissioner must keep a record of his investigations, which is at all times open to public inspection. The Commissioner, and various other persons, may enter upon premises and may order the removal of any combustible materials there found. If conditions dangerous to the safety of the premises exist, he may order such conditions to be remedied. The expenses of maintaining the office of the Fire Commissioner are to be defrayed by the insurance companies doing business in the province.

**Provincial Emblem** (No. 29).—The *Anemone patens*, popularly mis-called the Crocus, is declared to be the floral emblem of this province.

**Game Preservation** (No. 30).—This Act (*n*) consolidates and amends the law on the subject. Fawns of deer cabri or antelope, elk, or wapite, moose reindeer, or cariboo are protected at all times. The close season for muskrats is May 8th to January 1st; for grouse, November 1st to October 1st of the following year; for pheasant, from passing of Act to October 1, 1909; for ducks, from December 1st to September 1st of the following year. No person may kill more than fifty ducks in a day, except between October 1st and November 30th. In cases of confiscation of game for offences against this Act, the confiscated property, if dead, is to go to the prosecutor, unless he be an officer of the Government, when it is to be given to some charitable institution, at the discretion of the convicting judge. Live animals become the property of his Majesty in right of the province.

**Horse-breeding** (No. 32).—This Act compels the owner of any stallion standing or travelling for profit to enrol every year, with the Department of Agriculture and Immigration, the name, description, and breeding of such stallion. In the case of a pure-bred stallion the owner must make a statutory declaration that to the best of his knowledge such stallion is free from hereditary or transmissible unsoundness or disease, *i.e.* bone-spavin, cataract, curb, navicular disease, periodic ophthalmia, sidebones, ringbone, roaring, thickwind or whistling, thoroughpin or bog-spavin. According to the class of stallion a licence certificate is issued by the Department, and copies of this must be exhibited conspicuously in every stable or building where the stallion stands for public service.

**Liquor Traffic** (No. 38).—This Act amends the Liquor Licence Act. (*o*) It also provides that persons under eighteen years are not to be allowed in billiard, pool, or bagatelle rooms in connection with licensed premises without the consent of the parent or guardian of such person.

**Marriage Law** (No. 41).—This Act allows the ceremony of marriage between persons not under legal disqualification to be solemnized by the ministers and clergymen of every church and religious denomination,

(*n*) See *supra*, p. 239.

(*o*) See *supra*, p. 237.

duly ordained, according to the rites and ceremonies of the Church or denomination to which they belong. Such may include (1) the society of the religious people called or known as "Churches of God" or of Christ, and individually as "Disciples of Christ"; (2) the religious society called the Salvation Army; (3) certain Jewish synagogues; (4) the religious Society of Friends called Quakers. No marriage can be celebrated unless a licence has been obtained from the Minister of Agriculture and Immigration, or banns have been published. Marriages may be solemnised between 6 a.m. and 10 p.m., and must be in the presence of two or more witnesses. Persons under eighteen (unless a widow or widower) cannot marry without the consent of the father or mother or guardian. If the father or mother is not resident in the province, but the party is and has been a resident for the preceding twelve months, a licence may be granted. Persons under sixteen cannot marry except when necessary for the legitimation of offspring. It is an offence to marry persons knowing one or other to be an idiot or insane. Certain marriages solemnised before the passing of this Act are declared valid.

**Noxious Weeds** (No. 65).—The Noxious Weeds Act repeals the previous legislation on this subject and prescribes the law for the destruction of these pests to agriculture. Noxious weeds include common wild mustard, hare's ear mustard, tumbling mustard, Canada thistle, Russian thistle, perennial sow thistle, wild oats, French weed or stink weed, false flax, giant ragweed, dwarf ragweed, false ragweed, blue burr, blue lettuce, prickly lettuce, and any weeds to which this Act may be applied by a bylaw of any municipality.

**Telephone and Telegraph Systems** (No. 89).—This Act empowers the Government of the province to own and work telephone and telegraph systems. In the event of the Government purchasing any system, if the price is not agreed upon, it is to be assessed upon the actual value of the property, having regard to what the same would cost if then constructed, less deterioration, wear and tear, plus 10 per cent. Nothing is to be allowed for franchise or prospective profits.

## 1907

Acts passed—71: Public, 48; Private, 23.

**Billiards and Pool** (No. 2).—Keepers of licensed billiard, pool, or bagatelle rooms may not admit or allow to remain on their premises a minor under eighteen years without the consent of his parents or guardian. The keeper is responsible for good conduct on his premises, and must not allow persons of notoriously bad character to assemble or meet thereon. The police have a right of search at any time.



**Elections** (No. 13).—The names of certain persons who were entitled to be registered as electors, but who were refused registration by the registration clerk, were added to the list of electors.

**Game Preservation** (No. 17).—All bison or buffalo, and the females and fawns of deer, cabri or antelope, elk or wapiti, moose, reindeer or cariboo, are protected at all times.

**Cruelty to Animals** (No. 18).—The Humane Societies Act is amended by empowering any member of a society incorporated under this Act, or any inspector of such society, to enter upon any land, place, or premises, other than a dwelling-house, to search for cases of suspected cruelty to animals or birds. A justice of the peace may grant a search warrant empowering a search of any suspected place, and the caption before him of any animal cruelly used, and of the person in whose custody or possession it be.

**Libel** (No. 23).—All reports of proceedings in any Court of Justice, in the Senate or House of Commons of Canada, or in any committee thereof, or in the Legislature of any Province of Canada, or in any committee thereof, all matters contained in reports printed by authority of the Government of Canada or any province thereof, and all matters given out by any Department of the Government of Canada, or of any province of Canada, for publication, published in any public newspaper or other periodical, are privileged if they contain only fair and authentic reports without comment.

**Municipal Authorities.**—No. 27 amends the Municipal Act in many parts. Women of full age if qualified in respect of property may vote, and a vote is given to farmers' sons who have resided on their parents' farms for twelve months. Municipalities are not liable for accidents arising from persons falling owing to snow or ice upon the side-walks of a road except in case of gross negligence of the municipality. Municipalities may become fuel merchants to the residents, and for that purpose may keep a stock of twelve months' fuel, but the fuel must not be sold at such a price as to return a profit to the municipality.

**Public Schools.**—No. 35 amends the Public Schools Act on several minor matters, and provides that the British national flag shall be flown (weather permitting) from a flagstaff, on or near the school, every day of the term from 9 a.m. to 4 p.m. When not flown it must be exhibited on the wall of schoolroom.

## 4. NEW BRUNSWICK.

**1898 (a)** Acts passed—74: Public, 36; Local, 19; Private, 19.

**Advertising.**—A grant of \$3000 is made by No. 8 for the purpose of advertising the attractions of the province as a resort for tourists and sportsmen, by the publication and distribution of pamphlets, by sending exhibits of the game and fish of the province to exhibitions.

**Coroner's Inquests.**—No. 18 enacts that—

No inquest shall be held on the body of any deceased person by a coroner until it has been made to appear to the coroner that there is reason to believe or suspect that the deceased died from violence, criminal or unfair means, or by culpable or negligent conduct, either of himself or of others, under such circumstances as require investigation and not through mere accident or mischance.

**Criminal Evidence.**—By No. 22 the provisions of the English Act of 1898 (b) are adopted into the law of the province.

**Public Health.**—The law on the subject is consolidated in No. 36. (c) The constitution of the local Board of Health, their powers and duties, provisions against infection and public injury from tuberculosis, are the subjects of different sections.

**Municipalities.**—A consolidating Act, No. 34, contains the provisions as to the incorporation of counties, the constitution of the county council, the qualification and election of councillors, the mode of election, the meetings of the council, county officers, parish officers, the accounts, the duties of councillors, parish, and county officers, and the general management of the county property.

**Court of Probate.**—A third large consolidating Act is No. 35, containing the law relating to Courts of Probate. It includes the constitution and jurisdiction of the Court, the administration and procedure in all matters within its purview.

**1899 (d)** Acts passed—99: Public, 40; Local, 44; Private, 15.

**Crown Lands (No. 6).**—The Crown Lands Settlement Act consolidates and amends the law on this subject, and is passed to make provisions to afford greater encouragement to young men of the province to settle

(a) Contributed by C. E. A. Bedwell.

(b) 60 & 61 Vict. c. 36, *supra*, p. 17.

(c) See *infra*, p. 247.

(d) Contributed by H. Stuart Moore, Esq.



upon wilderness lands, the property of the Crown. Persons over the age of eighteen may be allotted land to the extent of a hundred acres, provided they have no real estate and desire the land for their own benefit and for the purpose of actual settlement and cultivation. The allottee must commence chopping and improving the lot assigned to him within one month after the approval of his application, and must within three months have improved it to the value of \$20. He must also within a year build a house fit for habitation, and chop down and cultivate no less than two acres. He must also cultivate and clear not less than ten acres within three years, and must reside continuously upon the land for the first three years, and from thence up to the issue of the grant. On compliance with these conditions a grant is made. He has no power to alienate, and for certain omissions and offences may forfeit his allotment.

**Fisheries** (No. 7).—The New Brunswick Fisheries Act provides for the artificial propagation of fish, and for the issue of fishery leases and licences, and for the appointment of fishery overseers to carry out the provisions of the Act.

**Game** (No. 8) (c).—The Game Act appoints close seasons for all sorts of animals, and makes it an offence to hunt, or in any way destroy, any moose or caribou, deer, mink, fisher or sable, partridge, wild goose, brant, teal, wild duck, black duck, snipe, woodcock, musk-rat, or beaver during the close times mentioned in the Act. It is also an offence to hunt or destroy any calf-moose under the age of one year, or any cow-moose; any game on Sunday; any game in any public park; any sea-gull, pheasant, or any small birds which frequent the fields and woods, excepting black-birds, crows, and sparrows, or to use dogs or any artificial light for the capturing of moose or deer; or to use any punt-gun, or swivel-gun, or net, or lights for the catching of wild goose, teal, etc.; and provisions are made in the Act for the conviction and punishment of offenders.

**Mines** (No. 9).—This enactment was passed to facilitate the discovery and development of oil and natural gas that is within the province. Under this Act the Lieutenant-Governor in Council may grant a licence, and the licensee is bound within two years from the date of the licence to expend in boring for oil and natural gas not less than \$20,000, and not less than a \$100,000 within the five years from the date of the licence.

**Lord's Day** (No. 11).—Under this Act no person shall on Sunday sell or publicly show forth or offer for sale or purchase any goods, chattels, or other personal property, or any real estate whatsoever, or do or exercise any worldly labour, business, or work of his ordinary

calling—conveying travellers or her Majesty's mails by land or water, selling drugs and medicine and works of necessity and charity only excepted. Milk and ice may be delivered on Sunday. Telephone and telegraph companies may transmit and deliver messages; cabs may be let out for other purposes than that of doing business or work; Monday morning's editions of newspapers may be prepared; physicians, clergymen, organists, choristers, and sextons may follow their vocations on Sundays; vessels may put to sea for any destination without the limits of the province; pilots and tugs may ply; mills and manufactories may in cases of necessity be worked; pumping of mines, towing and freighting of timber may take place to prevent loss or injury; fishing-boats may load and unload; through freight-trains may run; and steam-vessels under contract with the Canadian Government may load and unload. No person shall allow tipping in any inn, tavern, or house of public entertainment; no person shall play skittles, ball, football, rackets, or any other noisy game, or gamble or run races or go fishing; and steamships and railways may not convey excursionists on Sunday.

**Sale of Chattels** (No. 12).—This enactment provides that the conditional sale of chattels shall not be valid unless evidenced in writing signed by the conditional purchaser, which writing must be registered according to the provisions of the Act.

**Public Health.**—No. 36 amends the Public Health Act, 1898 (*f*), and empowers the local board of health to appoint a health officer, who shall be a duly registered physician, to be the sanitary adviser of such board; and power is also given for the appointment of an inspector to carry out the provisions of the Public Health Act, 1898.

**1900** (*g*) Acts passed—87: Public, 40; Local, 26; Private, 21.

**Marriage** (No. 4).—The Solemnisation of Marriage Act provides for the registration of persons authorised to solemnise marriages, and forbids unregistered persons to solemnise marriages. No person can be authorised to solemnise marriages unless he be a Christian minister or teacher having charge over a congregation in the province or connected therewith, or a commissioner and staff officer of the Salvation Army having charge of a division or branch of the Army within the province, or a Christian minister or teacher resident in the province who has been superannuated or placed on the supernumerary list.

Marriages must take place in the presence of two or more credible witnesses, and no person may knowingly solemnise any marriage when either party is under the age of eighteen years without the consent of the father or guardian. All marriages which have, before the passing

(*f*) See *supra*, p. 245, and *infra*, p. 248.

(*g*) Contributed by H. Stuart Moore, Esq.



of this Act, been solemnised in good faith, and the parties have cohabited as man and wife, are to be deemed valid unless the parties were not legally authorised to enter into matrimony by reason of consanguinity, affinity, or otherwise. The issue of persons informally married at the date of this Act are declared to be legitimate.

**Coroners (No. 5).**—The Coroners Act amends the law relating to inquests. This Act is framed on the Imperial Coroners Act, 1887. (*h*)

**Technical Education (No. 8).**—This Act authorises the Lieutenant-Governor in Council to enter into arrangements with the Governors of Nova Scotia and Prince Edward Island for the establishment of a school for furnishing instruction and technical training in agriculture, horticulture, mining, and mechanical arts.

**Consolidated Statutes.**—No. 9 provides for the further consolidation of the Statutes of the province.

**Canadian Troops (No. 11).**—This Act legalises the grants made by the municipal, city, and town councils within the province in aid of the Canadian forces sent to South Africa.

**Public Health (No. 21).**—This Act amends the Public Health Act, 1898, (*i*) and empowers the Lieutenant-Governor to grant money to any county, city, or town to aid in the suppression of small-pox.

**Destitute Persons (No. 26).**—This Act imposes on persons bringing or landing persons who are likely to become a public charge upon the rates, such as cattlemen on steamships, the liability of paying \$2 per diem for the support of such persons, if destitute. But the persons liable for this sum may, if necessary, take by force and remove the destitute persons to the boundary of the province. "Destitute persons" are defined to be persons who solicit funds to enable them to pay the cost of travelling from the province, or being in want of shelter or the necessaries of life.

**Schools (No. 32).**—The Schools Act amends and consolidates the Statutes relating to schools. It contains 124 sections. The general management of schools and school property is under the control of the Board of Education, which consists of the Lieutenant-Governor, the Executive Council, the Chancellor of the University of New Brunswick, and the Chief Superintendent of Education.

**Game.**—No. 39 amends the Game Act, 1899 (*k*). Persons not resident in the province must, for certain animals or game, take out a licence, costing \$30. No person may hunt or kill birds on the beaches, islands, or lagoons bordering the tidal waters along Northumberland Strait, the Gulf of St. Lawrence, and the Bay of Chaleur between December 31st and September 1st. The exportation of partridges is also forbidden.

(*h*) 50 & 51 Vict. c. 71.

(*i*) See *supra*, p. 245, and *infra*, p. 250.

(*k*) See *supra*, p. 246, and *infra*, p. 275.

**1901** (*l*) Acts passed—85 : Public, 36 ; Local, 71 ; Private, 85.

**Demise of the Crown.**—No. 7 is the Act rendered necessary in every part of the Empire by the death of Queen Victoria.

**Agricultural School.**—The Government is empowered by No. 18 to enter into an arrangement with Nova Scotia(*m*) and Prince Edward Island(*n*) for the establishment of an agricultural college.

**Debtors.**—The law relating to absconding, concealed, or absent debtors is consolidated in No. 21.

**Cemetery Companies.**—Provision is made by No. 22 for the incorporation of Cemetery Companies under the Joint Stock Companies Act, 1893, and particulars set forth as to their administration and duties.

**District Courts.**—The law relating to local courts is consolidated by No. 36. They have jurisdiction in matters not involving a sum of more than \$40. To the Act are appended numerous forms.

**1902** (*o*) Acts passed—105 : Public, 43 ; Local, 45 ; Private, 17.

**Bankruptcy.**—No. 3 abolishes the priority amongst execution creditors. In the event of the property of the debtor not being sufficient to pay every one, it is to be divided rateably amongst the creditors after payment of the costs of the creditor at whose instance execution was had.

**Trustees.**—No. 4 enables trustees and executors to invest trust funds in any duly chartered bank in Canada, in Government of Canada stocks or stock of this province, in first mortgages on land held in fee simple, and debentures of certain companies.

**Standard Time.**—No. 5 adopts the Atlantic standard of time for the province—*i.e.* the time at the sixtieth meridian of longitude.

**Public Parks.**—No. 6 provides for a public park to be made, in some portion of the province, covered with forest and not exceeding 900 square miles in extent. It is to be used as a public park and forest reservation, fish and game reserve, and health and pleasure ground for the people of the province. This park is to be under the control of the Department of Crown Lands, and the Lieutenant-Governor in Council is given full powers to make all necessary rules for carrying out the intention of the Act.

**Demise of the Crown.**—No. 8 enacts that in future the Legislative Assembly shall continue for five years and two months from the day of the writ of summons unless sooner dissolved, and shall not be affected by a demise of the Crown.

(*l*) Contributed by C. E. A. Bedwell, Esq.

(*m*) See *infra*, p. 254.

(*n*) See *infra*, p. 319.

(*o*) Contributed by H. Stuart Moore, Esq.



**Evidence.**—No. 18 orders that in future all proclamations and orders of the Lieutenant-Governor in Council and the publication thereof shall be judicially noticed in the province.

**Public Health.**—No. 33 amends the Public Health Act (*p*) by requiring all children on entering a public school to satisfy the head teacher that they have been successfully vaccinated within three years, or that they are immune. All persons have to be vaccinated, and the officer of the Local Board of Health may use such force as may be necessary to vaccinate any person who refuses to be vaccinated.

**Coronation.**—No. 42 provides for the expenses of the Premier at the Coronation ceremonies in June.

**1903** (*q*) Acts passed—122: Public General, 44; Local, 32; Private, 46.

**Employers' Liability.**—No. 11 provides compensation for injury to workmen. The amount of compensation is limited to three years' earnings or \$1500, whichever is larger. Workmen may in certain cases contract out of the Act.

The term "workman" does not include domestic servants, gardeners, miners, or lumberers, but means any railway servant, ship labourer, longshore-man, and any person being a labourer, servant, journeyman, artificer, or otherwise employed in manual labour or who works under a contract to execute any work or labour. Employers are not liable for defects in machinery, etc., unless such defects were not discovered owing to the negligence of the employer or of the person entrusted by him with the duty of surveying the machinery, etc.; or for the act of any person when acting in disobedience to the orders or bylaws of the employer; or when the workman knew of the defect or negligence which caused the injury and did not report it.

**1904** (*r*) Acts passed—88: Public General, 32; Local, 32; Private, 24.

**Highways.**—No. 6 (*s*) repeals Nos. 184 and 185 of the Consolidated Statutes relating to highways. It abolishes the distinction between great roads and by-roads and passes the soil and freehold of every highway existing at the time of this Act to his Majesty. In future roads are to be four rods wide. The control and management of the highways is placed in the hands of superintendents, who also have power on the application of at least five freeholders to lay out, widen, alter, or extend any highway, if such a course is desirable in the public interest. Compensation must be made for lands thus occupied, and provision is

(*p*) See *supra*, p. 245.

(*q*) Contributed by H. Stuart Moore, Esq.

(*r*) Contributed by H. Stuart Moore, Esq.

(*s*) See *infra*, p. 252.

made for the closing of any highway. Roads in certain cases may be for use only in the months of from December to April.

The upkeep of the highway is met by a poll tax of \$1 on every male resident between the ages of twenty-one and sixty, and an assessment of 12 cents on every \$100 of real and personal property and income of every person and corporation. In winter the inhabitants are liable to be called out to clear the roads of snow.

After two years from passing of this Act no action can be brought to recover the price of any waggon unless the width of the tyres of the wheels complies with the requirements of the Act—that is, the tyres must not be less than  $2\frac{1}{2}$  or 4 inches in width, according to the character of the waggon.

**Amendment of a Will.**—No. 11 amends the will of the Hon. John Boyd, who died without heirs or next to kin, leaving by his will his property to his wife for life. The Act declares the will to be read as if the words “for life” were omitted, and the estate was to be freed of any claim or interest on the part of the Crown.

**Dairies.**—No. 24 (*ss*) regulates the manufacture, sale, and export of milk, cream, cheese, or other products of milk or cream. Inspectors under the Act can, if necessary, forbid the use of any dairy utensil or anything used for the conveyance of dairy produce, or order them to be forthwith cleaned and disinfected. They can also condemn any stock and forbid the removal of any dairy produce. Dairy produce cannot be exported unless it is in all respects sound and has been duly inspected. Moreover, the ship or car in which it is shipped must be in a fit condition to receive it and be properly equipped for its safe carriage in good condition throughout the whole of the voyage.

**The Tercentenary.**—No. 31 empowers the Lieutenant-Governor to expend \$2000 in aid of the Tercentenary celebration of the landing of Champlain on the shores of New Brunswick.

**1905 (t)** Acts passed—92: Public, 34; Local, 38; and Private 20.

**Insurance (No. 4).**—The Life Insurance Act applies to every lawful contract of life insurance now in force, or to come in force. It requires that all the conditions and terms of the contract shall be set out in the policy. A policy cannot be avoided for inaccuracy of any statement in the application therefor unless such be material to the contract. An error in the age of the assured, when material, if made in good faith, does not avoid the policy, but the assured can only recover as for a policy made on his correct age. Persons of full age of twenty-one years are deemed to have an unlimited insurable interest in his own

(*ss*) See *infra*, p. 253.

(*t*) Contributed by H. Stuart Moore, Esq.



life. The Act also makes various provisions for the transfer of policies and the payment of claims to the rightful recipients.

**Automobiles** (No. 6).—The motor-car, as in other countries, has called for special legislation. In this province cars must be registered and carry a number, and the chauffeurs also have to be registered and must wear a badge with their number pinned upon a conspicuous part of their clothing. Motors must not go at a greater speed than is reasonable having regard to the traffic, or in any event on a public highway where the contiguous territory thereto is closely built up, at a greater rate than a mile in eight minutes, or elsewhere in a city, town, or village at a greater rate than one mile in five minutes. Outside such places the rate is not to exceed one mile in four minutes.

**Factories** (No. 7).—The Factories Act prescribes the conditions upon which young persons of either sex may be employed. As a rule females cannot be employed for more than ten hours a day, exclusive of meal hours, or more than sixty hours in one week. Provision is also made as to the fencing of dangerous machinery, the health of employees, and prevention of and escape from fire. Inspectors can be appointed from either sex to see that the Act is enforced.

**Immigration** (No. 13).—Indentures of apprenticeship made in the United Kingdom with respect to infants are valid in the province. This Act regulates the guardianship of children brought from abroad.

**Rule of the Road.**—No. 29 amends the Highways Act, 1904 (*u*). It also defines the rule of the road for persons driving draught animals—viz. when meeting, each to keep to the left of the centre of the highway, and when overtaking, the overtaking person is to keep to the right, and the overtaken person to keep to the left.

**1906** Acts passed—84: Public, 37; Local, 32; Private, 15.

**Legal Profession.**—No. 5 allows women to be admitted as barristers and attorneys.

**Education.**—No. 13 enables every school district by resolution to compel the attendance of school-children at schools. In cities and towns a similar resolution may be passed. Children, except in certain cases, have to attend on 123 days in each school year at some public or private school. Habitual truants from school may be arrested on view and taken to school or committed to prisons for children for a month. Children under thirteen years of age may not be employed in any mechanical manufacturing or mercantile establishment.

**Judicature.**—No. 37 (*v*) abolishes the Supreme Court, circuit courts, all courts of Oyer and Terminer and general Gaol Delivery, and the

(*u*) See *supra*, p. 250.

(*v*) See *infra*, p. 253.

Supreme Court in Equity, and creates one Supreme Court of Judicature, called the Court, consisting of two divisions—the Court of Appeal and the Trial Division. The Court is a Court of Record of original jurisdiction, and subject to this Act and Rules of Court, possesses all the powers and authority as by English law are incident to a Superior Court of Civil and Criminal Jurisdiction. The Court consists of a chief justice and five other judges. The chief justice and two judges form the Court of Appeal. This Act provides for the sittings of the Court, defines its jurisdiction, and the procedure to be followed. It also provides for the appointment of a lawyer to be the Law Reporter at a salary of \$1200 per annum. This Reporter is bound to publish at least two hundred copies of his reports, in which he is allowed to retain the copyright. Rules of Court are made by Order in Council and when made have to be laid before the Legislative Assembly.

**1907** (x) Acts passed—120: Public, 52; Private and Local, 68.

**Almshouses.**—No. 11 has no other object than to substitute the word “Homes” for “Almshouses.”

**Starch.**—The object of No. 25 is to encourage the erection of starch factories by granting a bonus on starch produced from the potato.

**Court of Appeal.**—In amending the Judicature Act, 1906, (y) No. 29 constitutes a Court of Appeal with all the powers—

as by the law of England are incident to a superior court of civil and criminal jurisdiction, both on the common law, chancery and exchequer side thereof, or otherwise howsoever.

**Telephone.**—No. 37 makes provision for transferring the telephones from private companies to the Government.

**Dairy Industry.**—By an amendment to the Dairy Industry Act, 1904, (z) No. 39 requires every proprietor of a dairy to register a stencil with the Department of Agriculture which he is to brand on all packages of butter manufactured at the dairy and shipped therefrom.

**Fishermen.**—By No. 50 the Lieutenant-Governor may grant a charter to a union of not less than fifteen fishermen formed, *inter alia*—

to procure information as to the latest improvements in boats and fishing gear of all kinds, as to the best methods of curing and preparing fish for market, and as to the transportation and marketing of all fish and fish products,

and “generally to improve and elevate the material, intellectual and social welfare and standing of the members.”

(x) Contributed by C. E. A. Bedwell, Esq.

(y) See *supra*, p. 252.

(z) See *supra*, p. 251.



## 5. NOVA SCOTIA.

**1898** (a) Acts passed—Public General, 64; Local, 61; Private, 81.

**Railways.**—No. 4 amends the railway law by making various provisions and imposing various restrictions as to tolls, and by giving large powers to the Railway Committee to make regulations as to speed and otherwise, and to hear and determine disputes between railway companies and other persons, and to award costs. The decisions of the committee may be made orders of the Supreme Court, and enforced accordingly; and the committee is empowered to direct inquiries, to make reports, to compel the attendance of witnesses, and to state cases for the opinion of the High Court.

**Statute Law Revision.**—No. 6 authorises the appointment of Commissioners to revise and consolidate the Public Acts of the province in suitable form for presentation to the Legislature by December 31, 1898.

**Queen's Counsel.**—No. 9 authorises the appointment of Queen's Counsel, and declares the precedence of the various members of the Bar.

**Mines.**—No. 10 amends the law on the Regulation of Mines, and the amending Acts in respect of the appointment of, and the facilities to be given to, a check-weigher.

**Insolvents.**—No. 11 avoids confessions of judgment, warrants of attorney, etc., by insolvent persons or persons on the eve of insolvency, with intent to defeat creditors. It also avoids gifts, conveyances, assignments, transfers, deliveries or payments of real or personal property by persons in insolvent circumstances or on the eve of insolvency, with intent to defeat or delay their creditors, or for the purpose of giving one creditor an unjust preference over others. Assignments for the benefit of creditors to an official assignee appointed by the Governor in Council for the county in which the debtor resides or carries on business or to some other person within Nova Scotia, with the consent of the creditors, are excepted from the above provisions, as also *bonâ fide* sales or payments in the ordinary course of trade, and conveyances, or deliveries of goods, *bonâ fide* made for valuable consideration. The Act makes provisions as to the form and effect of assignments for the benefit of creditors, and for the property and assets

(a) Contributed by L. S. Bristowe, Esq.

of estates so assigned not being removed from the province, and for the priority and proof of claims, and the proper distribution of the insolvent's estate, including the making of accounts and statements and the payment of dividends.

**Married Women.**—By No. 22 the Acts relating to the property of married women are consolidated and amended, and the Married Women's Property Act, 1884, is repealed. The Act provides that a married woman shall be capable of holding and disposing of real and personal property, and of contracting and suing and being sued to the extent of her separate property as if she were a *femme sole*, and that any contract entered into by a married woman otherwise than as agent shall bind all her present and future separate property, except that which she is restrained from anticipating. All property of a woman marrying after the commencement of the Act is made separate property, except that the Act does not apply to profits of a business carried on separately from her husband unless he files in the Registry of Deeds a consent in writing to its so applying, and that a woman carrying on a separate business must record a certificate stating her own and her husband's name and the nature and place of the business. Loans by a wife to a husband for the purposes of his business are in case of insolvency postponed to other debts. The Act provides that the execution by a married woman of a general power by will shall make the property assets for payment of her debts. Deposits, stocks, shares, etc., in the name of a married woman are to be her separate property, unless the contrary appears, and the husband need not join in a transfer. The Act authorises married women to insure their own or their husbands' lives, and provides that an insurance by a husband on his life expressed to be for the benefit of his wife and children shall create a trust. It also contains provisions with respect to the liability of a husband for his wife's ante-nuptial contracts and torts, and enabling a husband to give evidence against his wife or *vice versa*, and with regard to a husband neglecting to support his wife, and as to obtaining protection orders, and the effect of such orders; and it renders a married woman having separate property liable to the maintenance of her children.

**Dower.**—No. 23 makes a number of provisions with regard to the dower of married women. The Act empowers married women, by deed acknowledged, to convey or concur in conveying estates, or to release them from dower or other claims. The acknowledgment requires to be certified, and it and the certificate must be registered with the deed. If a husband disposes of his property by will inconsistently with his wife's right to dower, she is required to elect between her right to dower and her rights under the will; and various other provisions are contained as to the right of a married woman to dower. The Act



further empowers a married woman to dispose of her property by will (subject to certain provisions as to its execution), except that if it is made without her husband's consent, the husband has a right to elect between the provision made for him by the will and his tenancy by the curtesy in his wife's real estate. If a married woman dies intestate her husband takes one-third of her personal estate, and the remainder is distributed among her issue, or, in default of issue, one-half goes to the husband and one-half to her father, or if none, her mother, brothers, and sisters, and the issue of deceased brothers and sisters. If there are none of these, the whole goes to the husband.

**San José Scale.**—No. 24 is an Act for preventing the spread of the San José scale, prohibiting the keeping or disposing of infected plants, and appointing inspectors.

**Game.**—No. 25 amends the Game Act, 1896, as regards the time for killing hares, wild rabbits, and partridges, and in some other respects.

**Sewers and Dyke and Marsh Lands.**(b)—Nos. 29, 30, and 31 amend the Statute dealing with the Commissioners of Sewers and of Dyke and Marsh Lands. The first Act gives Commissioners of sewers large powers for making dykes, bridges, roads, tide-gates, and weirs, and for draining or drowning marshes and swamps.

The second Act grants facilities to the proprietors of marsh lands enclosed by dykes, or two-thirds in interest of such proprietors, to construct works for reclaiming any outer and unenclosed marsh, and of throwing the whole into one level.

The third Act provides for the establishment by commissioners of sewers of fences in marsh lands, and for keeping the same in repair, and dividing the cost among the proprietors.

**Towns' Incorporation.**—No. 32 amends the Towns' Incorporation Act, 1895, and amending Acts. After making a number of amendments of detail, it provides for the appointment of "revisers" to revise the lists of electors for the House of Assembly and for the election of mayors and councillors.

**Juries.**—No. 38 amends the Statute relating to juries. It reduces the number of grand jurors to be summoned at any term of the Supreme Court from twenty-four to twelve, and provides that seven instead of twelve grand jurymen shall be competent to find a true bill.

**Private Ways.**—No. 44 provides machinery (by means of a petition to the provincial secretary, and an inquiry by a commissioner appointed on such petition by Order in Council as to the propriety of the application, and arbitration as to the amount of compensation) by which mine, mill, granary, farm, or factory owners or occupiers may acquire

(b) See *infra*, p. 261.

a right-of-way for their produce to railways, public ways, or tidal or other waters.

**Education: Truant Children.**—No. 45 amends the Towns' Compulsory Attendance Act. It provides for the arrest and conveyance to school of any child who has once been convicted as a habitual truant, and authorises the imprisonment of a child so convicted.

**1899 (c)** Acts passed—Public General, 55; Local, 70; Private, 82.

**Roads.**—No. 1 makes provision for the formation and repair of roads. The council of every municipal district is required to divide its district into road districts, the councillors of the polling districts included in a road district constituting the road board. The council may also, but are not bound to, appoint supervisors, the duties of supervisors being, in default of such appointment, performed by the road board; and the supervisor of any road district may (subject to the approval of the road board) divide his district into road sections.

The duties of the road boards include examining into the condition and requirements of roads and bridges in their districts, and receiving reports from the supervisors thereon, appointing overseers, and reporting annually to the council as to the efficiency of the supervisors and overseers.

The duties of the supervisors include reporting to the board the division of the district into road sections, and recommending a suitable overseer for each section, ascertaining the condition and requirements of roads and bridges, and the amount of highway labour available and the money required and available for expenditure on roads and bridges, and expending the money apportioned to the section.

Provision is made for the apportionment among the road districts and the payment and expenditure of the road and bridge moneys granted by the Legislature to each municipality, and for making contracts for the construction and repair of roads and bridges. The supervisors are given large powers as to procuring materials for the construction and repair of roads and as to the planting of trees, drainage, and the removal of encumbrances, nuisances, and projecting buildings.

Every male between the ages of sixteen and sixty is made liable to do two days' labour on the roads, or to pay a poll-tax. The duty of overseeing the statute labour is entrusted to the overseers, under the supervision of the supervisors, and a variety of provisions are inserted for the enforcement and regulation of this labour.

**Timber Lands.**—No. 3 authorises the Governor in Council to grant

(c) Contributed by L. S. Bristowe, Esq.



leases of the right to cut and remove timber in lieu of issuing grants as heretofore. The leases may be for twenty years, with a right of renewal for a further period of twenty years, and at a price of not less than 40 cents per acre. Leases of Crown lands of inferior quality may be granted on special terms, and leases of the right to erect dams and sluices for the purpose of floating timber down rivers may also be granted.

**Foreshores, etc.**—No. 4 authorises the Governor in Council to issue grants or leases of ungranted river-beds, beaches, or foreshores and fish-traps and weirs.

**Iron and Steel.**—No. 5 enables the Governor in Council by order to refund for not more than eight years one-half of the royalty paid on coal used in the making of iron and steel to any company now engaged in such business, or organised and commencing operations within twelve months from August 1, 1899, and erecting within two years buildings, machinery, and plant to a specified amount.

**Agricultural College, etc.**—No. 6 authorises the establishment by the Governor in Council of an agricultural college and experimental farm with professors, etc., and provides for the granting of houses to municipalities for the establishment of creameries.

**Supreme Courts.**—No. 15 requires the Accountant-General and Prothonotaries of the Supreme Courts to make annual returns of funds in Court.

**Descent of Real and Personal Property.**—No. 17 amends the law "of the descent of real and personal property," by providing that in default of issue one-half—or if there is no kindred, the whole—of the property of an intestate shall go to his widow.

**Conveyance of Timber.**—No. 19 declares the rights of persons to float timber down rivers, creeks, and streams during the spring, summer, and autumn freshets, and provides for the removal of obstructions.

**Juries.**—No. 25 is a general Act relating to juries. It prescribes the qualification for grand jurors and petty jurors, with a list of exemptions and disqualifications. It provides for the appointment of local committees to revise and prepare the jury lists, the preparation and amendment of the jury book for each county being entrusted to the Prothonotary. Provision is also made for drawing jurors and preparing jury panels and for the attendance and organisation of juries, and for the payment of fees and fines for non-attendance.

**Marriage.**—No. 26 re-enacts and consolidates the law relating to the solemnisation of marriage. Except as otherwise provided, every marriage is required to be solemnised by a clergyman. The Governor in Council is authorised to appoint issuers of marriage licences, and marriages are required to be by banns or licence. Provisions are

inserted as to the publication of banns and as to the form of, and mode of application for, licences. Marriages of members of the Salvation Army may be solemnised by a male commissioner or staff officer of the Army, and marriages so solemnised must be by licence. Marriages are required to be in the presence of two witnesses, and provisions are made as to the filling up of marriage certificates and as to returns by clergymen and issuers of licences, and various penalties for breaches of the Act are imposed.

**Barristers and Solicitors.**—No. 27 consolidates the law as to barristers and solicitors. It provides for the appointment of Queen's Counsel by the Lieutenant-Governor, and for the admission of barristers and solicitors after serving articles of clerkship to a practising solicitor for four years. Barristers of any of the superior Courts in Great Britain or Ireland are entitled to be admitted as barristers in Nova Scotia, and also barristers in any Colonies which extend a corresponding privilege to Nova Scotia. Colonial barristers and solicitors, and solicitors of any Court in Great Britain and Ireland, may be admitted as solicitors on passing the final examination. An oath is required to be taken by every person admitted as a barrister. Certificates are necessary as a preliminary to practising either as a barrister or a solicitor. The Act also contains provisions regulating the Nova Scotia Barristers' Society and as to the taxation of costs and as to remedies against solicitors.

**Bills of Sale.**—No. 28 requires all bills of sale of personal chattels, or a true copy thereof, to be registered in the Deeds Registry. If the bill of sale is to secure the grantee repayment of advances or against loss from the endorsement of bills or promissory notes, or by reason of liability incurred or agreed to be incurred for the grantor, the circumstances must be stated in the bill and also in an affidavit which is required to accompany it, which affidavit must also state that the bill of sale was executed in good faith. In any other case the bill of sale must be accompanied by an affidavit stating that the consideration money is justly due and that the bill of sale is made in good faith. Bills of sale may be renewed from time to time by filing a renewal statement and an affidavit, and if not so renewed become invalid against creditors of the grantors and subsequent purchasers. Hirings, leases, or bargains for the sale of chattels accompanied by delivery if the property or a lien remains with the person letting or selling are required to be in writing, and to be accompanied by an affidavit, both of which must be filed in the Deeds Registry.

**Mechanics' Lien.**—No. 29 gives to any person who performs any work or service upon, or furnishes materials for, any erection, building, road, railway, wharf, pier, bridge, mine, etc., for an owner or contractor a lien thereon for the price of such work, services, or materials. The



liens created by the Act have priority over judgments, executions, attachments, etc., and, after registration, over conveyances and mortgages.

**Fire Insurance.**—No. 30 creates a number of statutory conditions which become part of every contract of fire insurance, unless stipulations to the contrary are inserted in conspicuous type in the policy. The conditions include two provisions: that the policy is to be void in respect of buildings or goods wrongly described by the insured, and that any change material to the risk and known to the insured is to avoid the policy unless promptly made known to the insurer.

**Medical Men.**—No. 32 amends and consolidates the law relating to medical practitioners and the practice of medicine. It provides for the continuation of the provincial Medical Board and the filling of vacancies. The duties of the Board are to regulate the study of medicine, appoint examiners, examine the credentials of applicants for registration, and to keep the medical register. The duties of the registrar and the Board of Examiners are defined. Registered practitioners are empowered to sue for their fees, and various penalties are imposed for offences against the law.

**Sureties for Officials.**—No. 33 provides for the acceptance of the bonds or policies of guarantee companies as security for the performance of his duty by any public officer or any official or servant of a benevolent, building, or insurance society or municipal corporation, or where such security is required to be taken by a judge.

**1900** (*d*) Acts passed—196: Public, 50; Local, 58; Private, 88.

**Employers' Liability.**—No. 1 follows the lines of the English Act of 1880 (*e*).

**Bridges.**—Owing to the limited amount of funds at the disposal of the several municipalities of the province which can be applied to the maintenance of the road and bridge service, No. 2 provides for a provincial loan and the assistance of the provincial engineer to secure economy in construction of bridges. (*ee*)

**Mines.**—The Commissioner of Public Works and Mines is empowered by No. 8, upon the authorisation of the Governor in Council, to purchase one or more machines known as "boring machines" to be used for the purpose of exploring for or testing mineral deposits in this province.

**Sanitarium for Consumptives.**—The Governor in Council is authorised by No. 9 (*f*) to appoint a board of trustees to erect, furnish, and equip a sanitarium for the care and treatment of persons suffering from tubercular disease of the lungs in its earlier stage. Patients who are able

(*d*) Contributed by C. E. A. Bedwell, Esq.

(*e*) 43 & 44 Vict. c. 42.

(*ee*) See *infra*, p. 264.

(*f*) See *infra*, p. 263.

or whose friends have the means are obliged to pay, and others having a legal settlement are to be charged to the local authority requiring their admission, but no provision as to payment shall prevent the admission and treatment of patients who have no means of payment, whose support and treatment shall fall upon the general funds of the institution.

**Agricultural College.**—An arrangement with the Governments of New Brunswick and Prince Edward Island is authorised by No. 10 for the establishment of a school for instruction in agriculture, horticulture, mining, and mechanical arts, with a farm and appurtenances.

**Companies.**—No. 11 (*g*) is a complete consolidating Act following closely the lines of English law.

**Marshes.**—The expression “marsh” includes dyked marsh or meadow, undyked marsh or fen, swamp, bog, or lowland. No. 12 (*gg*) is a consolidating measure which has for its object the compulsory reclamation of land under a Board of Commissioners appointed for the purpose.

**Ditches and Water Courses.**—No. 13 appears to be supplementary to No. 12 in providing for the efficient drainage of land under the supervision of an inspector of drains and ditches.

**Illegitimate Children.**—The law concerning the maintenance of illegitimate children is contained in No. 14, which makes the usual provisions as to the responsibility of the reputed father.

**Medical Officer of Health.**—No. 17 requires every municipal council and every town council to appoint a duly qualified medical practitioner as health officer. In default the Governor in Council may make the appointment.

**Fishermen's Bait Associations.**—The Dominion Government having offered financial aid in the establishment of fishermen's bait associations, the provincial Legislature in No. 19 provides a simple and inexpensive method for their incorporation.

**Libel.**—Newspaper reports of public meetings and judicial proceedings are privileged publications by No. 37, if published without comment or malice and “if the publication of the matter complained of was for the public benefit.”

**Sheep.**—Authority is given by No. 38 to any person to kill a dog worrying a sheep.

**Revised Statutes.**—Provision is made by No. 44 for the incorporation in the new edition of the Revised Statutes of the legislation of the current session and various details as to their publication.

**Medical Attendance.**—Employees from whose wages a deduction is made for medical attendance are allowed by No. 46 (*h*) to specify the name of a medical practitioner to their employer, but he is not bound

(*g*) See *infra*, p. 263.

(*gg*) See *supra*, p. 256.

(*h*) See *infra*, p. 263.



to recognise their request unless it is made by at least one hundred and fifty.

**Encouragement of Manufacturing and Shipbuilding.**—Machinery, manufactured stock, plants, and tools are exempted from taxation and a small licence fee imposed instead. Ships or shares of ships in iron or steel or metal built in the province are exempted by No. 47 (i) from taxation for a period of ten years.

**1901 (k)** Acts passed—199: Public, 54; Local, 75; Private, 70.

**Factories.**—No. 1 is a general law following the lines of English legislation.

**Demise of the Crown.**—The Act required by the death of Queen Victoria is similar in terms to those passed in other parts of the Empire.

**Auditor.**—An auditor is to be appointed under No. 4 to examine and audit the accounts of such of the departments of the public service as may be determined by the Governor in Council.

**Inspector of Legal and Registry Offices.**—The Governor in Council is authorised by No. 5 to appoint some competent person “to inspect the offices of the sheriffs, prothonotaries, clerks of the Crown, clerks of the county court, registrars of probate, and registrar of deeds in the respective counties of the province, and of such other offices connected with the administration of justice as the Governor in Council may from time to time direct.” Comprehensive details are given as to his duties in order that he may secure the thorough efficiency of the offices.

**Dairying.**—To encourage dairying in the province monetary grants may be made by authority of No. 7 to persons who propose to set up a creamery above a certain size. Instructors may also be appointed to give instruction in butter-making. Local authorities may assist by providing the land upon which to erect the creamery.

**Horticulture.**—Arrangements are made by No. 8 similar to No. 7, *mutatis mutandis* for the encouragement of horticulture.

**Victorian Order of Nurses.**—Local authorities are empowered by No. 9 to make grants to the association known by this title, and its property may be exempted from taxation.

**Floral Emblem.**—The trailing Arbutus (*Epigæa ripens*, Linn.), commonly known as the Mayflower, is declared by No. 10 to be and from time immemorial to have been the floral emblem of the province.

**Companies.**—Companies incorporated by Royal Charter may by No. 11 change their names by Order in Council instead of the special Act of the Legislature required heretofore.

(i) See *infra*, p. 263.

(k) Contributed by C. E. A. Bedwell, Esq.

**Cold Storage Warehouses.**—In encouraging the building of cold storage warehouses, they are, by No. 13, only to be assessed for taxes on the amount of the purchase-money for a period of ten years.

**Sanitariums (*sic*) for Consumptives.**—Local authorities are authorised to contribute to the cost of erecting sanatoria under the authority of No. 9 of 1900. (*l*)

**Incurables.**—The superintendent of the general hospital is required by No. 24 to notify the relatives of any patient of whom the physician or surgeon reports that he “has received all the benefit he can derive from the treatment in the hospital” with a view to his removal. If he is not removed after a reasonable time, then the superintendent makes a request for his removal to the clerk of the city, and failing action by him the patient may be removed to the poor’s asylum at the cost of the municipality.

**Succession Duty.**—Succession duty paid upon a charitable bequest may be refunded by authority of No. 32.

**Encouragement of Manufacture and Shipbuilding.**—No. 47 of 1900 (*m*) is extended by No. 43 for a period of twenty years.

**Medical Attendance.**—No. 46 of 1901 (*n*) is amended by No. 45 to allow the application to be made by one hundred and twenty-five employees, or if less than that number are employed at a mine by a majority.

**Juvenile Smoking.**—Tobacco may neither be sold nor given to any one under the age of sixteen, by No. 46, either for himself or any other person.

**1902 (*o*)** Acts passed—214: Public, 42; Local, 87; Private, 85.

**Debentures.**—No. 7 makes full provision for the issue of municipal and other debentures.

**Companies.**—Various provisions from the English Companies Act, 1867, (*oo*) are incorporated by No. 8 in the Companies Act, 1900. (*p*)

**Conveyance of Timber.**—Persons engaged in conveying timber and lumber have a right to enter on the adjoining land, but if in doing so they cause any damage then by No. 33 arbitrators shall be appointed to adjust the matter.

**1903 (*q*)** Acts passed—289: Public, 69; Local, 105; Private, 115.

**Relief of Creditors.**—The object of No. 14 is to prevent any priority among creditors in the distribution of the proceeds of personal property taken under execution.

(*l*) See *supra*, p. 260.

(*n*) See *supra*, p. 261.

(*oo*) 30 & 31 Vict. c. 161.

(*m*) See *supra*, p. 262.

(*o*) Contributed by C. E. A. Bedwell, Esq.

(*p*) See *supra*, p. 261.

(*q*) Contributed by C. E. A. Bedwell, Esq.



**Law Reports.**—The Attorney-General is authorised by No. 21 to appoint stenographers to attend the sittings of the Supreme Court.

**School Libraries.**—No. 24 authorises a small grant to be made to teachers for rural school libraries, the amount to vary according to their efficiency.

**Mechanical Bait Freezers.**—The conditions are set forth in No. 30 upon which any number of fishermen, not less than three, may form themselves into a company for the purpose of building, owning, managing, and operating cold storage refrigerators for freezing, storing, preserving, buying, selling, and trading in bait for fish purposes, and in fish itself.

**Trade Disputes.**—No. 37 gives to the Provincial Secretary powers similar to those exercised by the Board of Trade in England in the settlement of trade disputes.

**Alimony.**—Alimony may be granted by No. 64, in cases in which it would be given in England.

**1904**(*r*) Acts passed—212 : Public, 48 ; Local, 86 ; Private, 78.

**Forest Fires.**—“Every person in charge of any drive of timber, surveyor exploring party, or of any other party requiring camp fires for cooking or other purposes, shall provide himself with a copy of this Act, and shall call his men together and cause the Act to be read in their hearing, and explained to them at least once in each week during the continuance of such work or service.” The Act (No. 1) referred to is for the purpose of preventing forest fires. It contains eighteen sections, of which several have to be read with the Principal Act contained in the Revised Statutes, No. 91. Each municipality is to appoint a chief forest ranger to secure the effective working of the law.

**Coal Mines.**—Various grades of workers in mines are required to hold certificates of proficiency by No. 2. A Board of Examiners is appointed to examine persons applying for certificates as stationary engineers.

**Public Health.**—A Provincial Health Officer is appointed by No. 3 to have the oversight of matters of public health throughout the province and supervise the work of the local medical officers of health.

**Loan Corporations.**—By No. 4 loan corporations are required to register particulars of their operations with the Registrar of Companies.

**Bridges.**—Some amendment of the law(*s*) is frequently required. This one (No. 5) is chiefly concerned with the approaches to the bridges.

(*r*) Contributed by C. E. A. Bedwell, Esq.

(*s*) See, for example, No. 2 of 1900, *supra*, p. 260.

**Road Instructor.**—To the Provincial Engineer's Department is to be attached by No. 11 a road instructor whose duty it is "to keep thoroughly informed as to all improvements in connection with the construction and maintenance of roads, and especially with regard to any improvements in road machinery, and to at all times lend his aid in promoting improvements on the highways throughout the province, and collect and disseminate useful information relative to road construction and improvement."

**Foreign Companies.**—No. 24 amends the conditions upon which foreign companies may do business in Nova Scotia.

**Sheep.**—A penalty of not less than \$10, nor more than \$50, is imposed by No. 38 for shooting sheep.

**Mutual Insurance Companies.**—No. 46 makes full provision in eighty-nine sections for the formation of mutual insurance companies.

**Registration of Titles to Land.**—For each district a "Master of Titles" is to be appointed by No. 47 to carry out a system of land registration.

**1905** (*t*) Acts passed, 195—Public, 46; Local, 82; Private, 67.

**Seed Grain.**—Municipalities are allowed by No. 5 to make loans for supplying districts with seed grain.

**Prosecuting Officer.**—The Attorney-General is given the title of "Prosecuting Officer" by No. 6 in criminal proceedings.

**Fishermen's Unions.**—Not less than fifteen persons in any place or settlement are encouraged by No. 39 to form themselves into a fishermen's union, whose primary object is "to procure information as to the latest improvements in boats and fishing gear of all kinds, as to the best methods of curing and preparing fish for markets, and as to the transportation and marketing of fish, and fish products." Generally the unions are "to improve and elevate the material, intellectual and social welfare and standing of the members."

**Library Associations.**—Municipalities are authorised by No. 45 to make an annual appropriation to library associations.

**1906** (*u*) Acts passed—255: Public, 59; Local, 153; Private, 43.

**Licensing Law.**—Penalties are imposed by No. 3 upon any person, licensee, or carrier who sends liquor into any district in which the Canada Temperance Act is in force.

**Prosecuting Officer.**—The Attorney-General is authorised by No. 4 to nominate barristers to conduct criminal prosecutions on behalf of the Crown.

(*t*) Contributed by C. E. A. Bedwell, Esq.

(*u*) *Ibid.*



**Education.**—An Advisory Board of Education is appointed by No. 5, to consist of two teachers elected by the teachers of the province, and five members nominated by the Governor in Council. The duties of the Board are to advise as to the following matters :—

- (a) Text-books and apparatus for use in the schools, books for school libraries.
- (b) Qualification and examination of teachers.
- (c) Courses of study for the public schools and the standard for admission to county academies and high schools.
- (d) The classification, organisation, and discipline of the normal school, county academies, and the public schools.
- (e) Such other educational matters as may from time to time be referred to them by the superintendent or the council.

No. 7 is a Teachers' Superannuation Act.

**Public Health.**—The inspection of dairies and slaughter-houses is enforced by No. 22.

**Railways.**—Members of the Legislative Council and House of Assembly are permitted free transit by No. 25 on all railways and steamboats subsidised by the Government.

**Commissioners of Oaths.**—All barristers, by No. 42, are authorised to administer oaths and take and receive affidavits.

**Children.**—No. 54 follows the line of legislation in Ontario for the protection of child delinquents and the constitution of children's courts.

**National Monument.**—The ruins of the French fortifications at Louisburg, and old burying ground at Point Rochefort in Louisburg, are declared by No. 56 to be an historical monument of the Dominion of Canada and vested in a body of trustees.

1907 (x)

Acts passed—203 : Public, 66.

**Technical Education (No. 1).**—A technical college is established affording facilities for scientific research and instruction in civil, mining, mechanical, chemical, metallurgical and electrical engineering. The Act repeals No. 22 of the Revised Statutes.

**Highways.**—No. 5 provides that "every male person of more than sixteen and less than sixty years of age shall pay annually such poll-tax as is fixed by the Council, not, however, to be less than \$1 nor more than \$2, for the maintenance of the public roads within the municipality in which he resides." There are certain exemptions from the payment of this tax, such as, disability to perform labour on roads, being a clergyman or minister of religion, etc.

(x) Contributed by C. C. Gerahty, Esq.

The Act also provides for the appointment of a "Supervisor of Roads" in each polling district within the municipality, possessing various powers and duties connected with the control of roads.

**Liquor Licence (No. 7).**—This Act amends the Liquor Licence Act, No. 100 of the Revised Statutes, 1900, and provides that any licensee or other person who sends liquor to any person, other than a legally qualified physician, in any city, town or municipality in which the Canada Temperance Act is in force, or in any town in which there is no licence, shall be liable to a penalty of \$50 for the first offence, and of \$100 for a second offence, and \$200 for a third and each subsequent offence.

Ignorance of the application of the Canada Temperance Act, or the absence of a licence, affords no defence under this Act, unless, after making due inquiry, the defendant has been unable to ascertain the facts.

**Industries and Immigration (No. 9).**—This Act provides for the appointment of a "Secretary of Industries and Immigration" whose duty it shall be—

To collect and arrange facts and statistics relating to the agricultural, industrial, and other interests and resources of the province; to adopt such measures for circulating and disseminating the same, as may be found best adapted to promote the progress of the province, and to encourage immigration from other countries.

**Old Age Pensions (No. 16).**—By this Act the Governor in Council is authorised to appoint a Commission to examine into and report upon the feasibility of adopting some scheme providing old age pensions for workmen, and particularly for such workmen as have either by themselves, or in conjunction with their employers, established benefit or relief societies.

**Dentists (No. 23).**—The Dental Association is empowered to establish a Dental College to advance the practice of dentistry and confer degrees.

**Game (No. 27).**—This Act amends and consolidates the Acts for the Preservation of Game. It consists of seventy-nine sections and repeals The Game Act, No. 101 of the Revised Statutes, and all Acts amending the same.

**Electric Light (No. 40).**—This Act provides that every person, firm and association carrying on the business of furnishing electric light or electric energy for sale shall file, in the office of the Provincial Secretary, a schedule of the prices charged for electric light and electric energy. The Governor in Council is authorised, upon application, to "alter, reduce or modify" such charges.

**Motor Vehicles (No. 44).**—By this Act every person owning a motor



shall file in the office of the Secretary a statement of his name and address, including the name of the maker, factory number, style of vehicle, and motor power. The fee for filing shall be \$5. Every motor must display the number assigned to it, in such a manner as to be plainly visible.

It is declared that—

No person shall drive a motor on a public highway at a rate of speed greater than is reasonable and proper, having regard to the traffic and use of the highway, or so as to endanger the life or limb of any person, or the safety of any property, or in any event, on any public highway in any city, town or village, where the contiguous territory thereto is closely built up, at a greater rate than one mile in eight minutes, or elsewhere, in a city, town or village, at a greater rate than one mile in five minutes, or elsewhere, outside of a city, town or village, at a greater rate than one mile in four minutes.

On approaching a person walking on a highway, a person driving a motor must give reasonable warning of approach.

Every car must be provided with efficient brakes, lamps, and also with a suitable bell or horn.

Any person found guilty of an offence under this Act shall be liable to a penalty not exceeding \$50 for the first offence, \$100 for the second offence, and \$200 or imprisonment not exceeding sixty days, or both, for a third or subsequent offence.

## 6. ONTARIO.

1898 (a)

Acts passed—79.

**Revised Statutes** (No. 2).—This Act declares that the Revised Statutes of Ontario had been on, from, and after the 31st day of December, 1897, and should thereafter be in force in the province, subject to the provisions contained in the Act for the consolidation of the Statutes of Ontario. (b)

**Revision of Voters' Lists** (No. 3).—This Act enables the county judge presiding over the Voters' Lists Court to make such corrections in the list of voters, as the evidence in his opinion warrants, with respect to the right character and qualifications under the Manhood Suffrage Act of the persons to be voters.

**Suffrage Registration** (No. 4).—This Act amends the Manhood Suffrage Registration Act in various ways, and makes penal corrupt

(a) Contributed by Wallwyn P. Shepheard, Esq.

(b) 60 Vict. No. 3.

practices, such as bribery, treating, etc. Persons found guilty of an offence under the Act are made subject to penalties and disqualification from voting at any election for three years thereafter.

**Election of Members of the Legislature** (No. 5).—This Act amends the Election Act as regards the personal expenses of candidates and the qualifications and duties of returning officers.

**Civil Service Retiring Allowance** (No. 6).—This Act declares that persons who after January 1, 1898, become members of the civil or public service of the province shall not be entitled to a retiring allowance upon retiring from such service, nor their families in case of their death.

**Civil Servants' Salaries** (No. 7).—This Act enables the creditor of a Government officer, clerk, or employee, by notice served upon the treasurer of the province, to attach all debts then owing by the Crown to the employee to the same extent as a garnishee order issued by a court of law.

**Forest Reserves** (No. 10).—This Act enables the Lieutenant-Governor in Council to set apart portions of the public domain for the purpose of future timber supplies, such tracts of land to become by proclamation permanent Crown forest reserves.

**Mining Claims** (No. 11).—This Act amends the Mines Act. (*c*) It provides for the granting and renewal of miners' licences, and regulates the conditions to be fulfilled by licensees applying for patents or leases for lands embraced in their claims.

**Investment of Funds in Court** (No. 13).—This Act amends the Judicature Act (*d*) by empowering the Supreme Court of Judicature for Ontario to invest funds in Court in the purchase of debentures issued by any municipality in the province under the provisions of the Municipal Drainage Act, or by any county or union of counties in the province under any other authority.

**Judicature** (No. 15).—This Act amends the Division Courts Act (*e*) as to committal of debtors under judgment summonses.

**Companies Acts** (*f*) (No. 19).—This Act amends the Companies Act (*g*) by providing that it should not be deemed obligatory on a company, when stamping or marking its name on bales, etc., of goods or merchandise, to use the unabbreviated word "limited."

**Cemeteries** (No. 21).—This Act enables trustees or companies holding lands adjoining one another, or in the same municipality or neighbourhood, as sites for burial grounds, to appoint trustees to whom such sites of burial-ground shall be conveyed in perpetual succession for the purpose of burial-grounds.

(*c*) Rev. Stats. No. 36.

(*d*) Rev. Stats. No. 51.

(*e*) Rev. Stats. No. 60.

(*f*) See *infra*, p. 286.

(*g*) Rev. Stats. No. 191.



**Municipal Councils** (No. 23).—The Municipal Amendment Act, amongst other amendments of the existing Municipal Act, (*h*) provides—

- (1) That the council of every town with a population not exceeding five thousand shall consist of a mayor and six councillors, to be elected by a general vote.
- (2) That after two annual elections the council of a town may, and upon petition of twenty per cent. of the electors, shall, by a bylaw assented to by a majority vote of the electors, divide the town into wards for the election in each of one councillor, the remaining councillors to make up the number of six being elected by a general vote.
- (3) That the council of any town with a population of more than five thousand, and of any city with a population not exceeding fifteen thousand, may by a bylaw receiving the assent of the electors provide that the council of such town or city shall be composed of a mayor and one alderman for each one thousand of population, to be elected by a general vote.

Further provisions are included as to polling hours, appointment of public auditors, borrowing powers, supervision of trees on streets, purchase of fire-engines, issue of debenture loans for drainage, and granting bounties for the establishment of rolling mills and ironworks.

**Public Libraries** (No. 27).—The Act respecting public libraries in villages amends the Public Libraries Act, (*i*) and provides that on the petition of not less than thirty electors in a police village, the township may, with the assent of the electors, establish a public library under a public library board composed of trustees appointed in manner therein specified.

**Toll Roads** (No. 29).—This Act is to further facilitate the purchase of toll roads by the municipalities.

**Sale of Patent and other Medicines** (No. 30).—This Act, respecting the sale of patent and other medicines, and of alcohol for the purposes of arts and manufactures, makes various provisions as to the sale of medicines containing alcohol, and for an analysis of all patent and proprietary medicine kept for sale by chemists.

**Gambling** (No. 31).—This Act prohibits gambling and games of chance at agricultural and other public exhibitions, or within half a mile thereof, and is incorporated with the Agriculture and Arts Act. (*k*)

**Protection of Infants** (No. 32).—This Act amends No. 258, Revised Statutes, 1897, and makes further provision respecting maternity boarding-houses and the protection of infant children.

**Universities** (No. 35).—This Act amends the Act respecting the

(*h*) Rev. Stats. No. 223.

(*i*) Rev. Stats. No. 232.

(*k*) Rev. Stats. No. 43.

University of Toronto and University College, and the federation thereof with other universities and colleges, *(l)* and provides for the separate representation of the Victoria University on the senate of the University of Toronto for six years, after which period such separate representation shall cease, and the graduates of the two universities shall vote as one body on elections to the Senate.

1899 *(m)*

Acts passed—38.

**Executions and Sheriffs** (No. 7).—This amends the law on these subjects in various particulars. Among other things it empowers a sheriff to seize and sell any equitable right or interest in any goods or chattels, including leasehold interests.

**Revenue** (No. 8) *(n)*.—By way of increasing the revenues of the Crown this Act imposes a tax, varying slightly in amount, on banks, insurance companies, loan, trust, railway, telegraph, gas, electric, and other companies *ejusdem generis*.

**Succession Duty** (No. 9).—The most important point in this Act is the definition of property liable to duty. It is to include any property of which a person was at the time of his death competent to dispose—*e.g.* property appointable under a general or limited power.

**Mines** (No. 10) *(o)*.—A right is given by this Act to stake out locations in unsurveyed territory on taking up a licence, and provision is made for the grant of mining leases.

**Statute Law Amendment** (No. 11).—A large number of miscellaneous amendments are comprised in this Act—forms of oaths, non-suits, empanelling grand jurors, forest reserves, arbitrators, etc.

**Surety Companies** (No. 12).—The guarantee company is a product—and a convenient one—of modern business life. The present Act authorises the Lieutenant-Governor in Council to direct that the bond of any such surety company named in the Order in Council—*i.e.* a company empowered to grant bonds by way of indemnity—may be given as security in all cases where security for costs is ordered to be given.

**Seduction** (No. 13).—An unmarried girl who has been seduced may have no parents to bring an action to redress the wrong. In such a case the legal guardian at the date of the child's birth may maintain the action, though the girl is out at service.

**Trustees** (No. 15).—This Act is on the lines of the English Judicial Trustees Act, 1896, *(p)* and enables the Court, where a trustee is

*(l)* Rev. Stats., 1897, No. 298.

*(m)* Contributed by Edward Manson, Esq.

*(n)* See *infra*, p. 307.

*(o)* See *infra*, p. 273, and repealing Act No. 11 of 1906, *infra*, p. 307.

*(p)* 59 & 60 Vict. c. 35.



technically liable for a breach of trust, to relieve him from the consequences if he "has acted honestly and reasonably and ought fairly to be excused."

**Wages** (No. 17).—By No. 156 of the Revised Statutes priority is given to wages on the distribution of an estate. This Act provides for such wages being paid within a month of the estate coming under the control of the executor or liquidator.

**Workmen's Compensation** (No. 18).—The Ontario Workmen's Compensation Act (*q*) is on the lines of the English Employers' Liability Act, 1880. (*r*) The present Act amends it in several particulars, and chiefly by providing a scheme for settling claims by arbitration, the judge of the county court to act as arbitrator.

**Cheese and Butter Exchanges** (No. 20).—Facilities are afforded by this Act for any five or more persons engaged in the manufacture of cheese or butter obtaining incorporation as an "Exchange" for the above articles, and regulating by rules the mode of conducting sales, inspection, weighing and shipment, etc., and the settlement of disputes by arbitration.

**Loan Corporations** (No. 22).—Any loan corporation doing business in the province is by this Act required on demand to satisfy the Registrar of the legality and regularity of any bylaws passed by it, failing which the corporation may be struck off the register.

**Municipalities** (No. 26).—This amends the Municipal Act (*s*) in a number of particulars: voting, qualifications, oaths, quashing of bylaws, explosives, gas, electricity, water, street railways, ferries, cattle-running, billiard-rooms, and other variegated objects of municipal life.

**Assessment of Property** (No. 27) (*t*).—Taxes may by this Act—amending the principal Act (*u*)—be ordered by a municipal council to be paid into the office of the treasurer or collector by a named day and discount allowed for punctual payment. The property subject to distress for non-payment is defined.

**Public Libraries** (No. 29).—A municipal corporation may issue debentures for the above purpose. Any person interested in any contract with the corporation, or expectant of compensation from it, is disqualified from acting as a member of the board of management.

**Tree Planting** (No. 30).—The Ontario Tree Planting Act (*x*) provides for the council of a municipality paying a bonus or premium for every tree planted within the municipality on any highway or the boundary line of farms. The present Act provides for the appointment and

(*q*) Rev. Stat. No. 160.

(*s*) Rev. Stat. No. 223.

(*u*) Rev. Stat. No. 224.

(*r*) 43 & 44 Vict. c. 42.

(*t*) Repealed by No. 23 of 1904, *infra*, p. 301.

(*x*) Rev. Stat. No. 243.

payment of an inspector of trees. There seems a hint here for our municipal authorities.

**Brewers and Distillers' Licences** (No. 31). (*y*)—Brewers and distillers are not to sell any spirituous or fermented liquors unless they have taken out a provincial licence, which is to be an authority to sell to persons who are holders of licences under the Liquor Licence Act. The fee for the provincial licence is graduated according to the amount invested in the business. A scale of fees, graduated according to the population of the place, is also fixed for taverns and shop licences under the Liquor Licence Act. (*z*)

**Game** (No. 33).—Hunters are to carry their licences on their person. The sale of game during the close season, or its possession is prohibited, but a licence for cold storage may be obtained.

**Fisheries** (No. 34).—This amends the Ontario Fisheries Act (*a*) in a number of particulars. No salmon trout or lake trout weighing less than two pounds is to be exposed for sale. Nets are not to be used for catching minnows in streams inhabited by speckled trout. A licensee must allow inspection of fish taken.

**San José Scale** (No. 35). (*b*)—Orchards or plants in any nursery found by an inspector to be infected with this disease may be destroyed. Plants before removal from a nursery must be fumigated.

**Schools** (No. 36).—This empowers the school corporation of any municipality where there is no high school to establish "continuation classes," and amends the law under the Public Schools Act. (*c*)

**1900** (*d*) Acts passed—142: Public, 48; Local and Private, 94.

**Election**.—No. 4 amends in certain details, such as counting of votes by returning officers, the preservation of documents, etc., the Ontario Elections Act. The most important provision is that a witness respecting an election is not to be excused answering on the ground of privilege or that the answer may criminate him, but if he answers truly, he is to be entitled to a certificate of indemnity.

**Spruce and Pulp Wood on Crown Domains** (No. 11).—By this Act every licence to cut spruce or other soft wood not being pine suitable for manufacturing pulp or paper on the ungranted lands of the Crown is made subject to the condition that all such timber should be manufactured into pulp, paper, or wooden-ware in Canada.

**Mines** (No. 13). (*e*)—Mining royalties are by this Act abolished,

(*y*) See *infra*, p. 306.

(*a*) Rev. Stat. No. 285.

(*c*) Rev. Stat. No. 292.

(*e*) See *infra*, p. 303, and repealing Act No. 11 of 1906, *infra*, p. 307.

(*z*) Rev. Stat. No. 245.

(*b*) See *infra*, p. 275.

(*d*) Contributed by Edward Manson, Esq.



and in lieu thereof a licence fee is imposed on the gross quantity of the ores or minerals raised. A statement on oath of the output is to be filed every year by the miners with the Director of the Bureau of Mines. If the ores are treated in Canada, a proportion of the fee may be remitted. The Lieutenant-Governor may require lands valuable for iron ore to be worked. Plans of mines are to be filed at the Bureau of Mines. Regulations are also made for ventilation of mines, magazines for blasting, explosives, refuges in tram road, fencing of old shafts, safety from water, skidways, brakes, bills, etc.

**Labour** (No. 14).—This Act establishes a Bureau of Labour attached to the Department of the Commissioner of Public Works. The object of the Bureau is to collect, systematise, and publish information and statistics as to employment, wages, and hours of labour throughout the province, and other subjects of interest to working men, their commercial, industrial, and sanitary conditions, and the permanent prosperity of the industries of the province.

**Companies** (No. 23).—This Act amends in certain particulars the Ontario Companies Act. The most important amendments are those sanctioning the purchase by the company of its preference stock, requiring the use, where the company is one formed for gain, of "Limited" outside company's places of business and in their advertisements, bills, invoices, etc., and fixing a scale of fees payable on filing certain returns.

**Extra Provincial Corporations** (No. 24).—These—that is to say, corporations created otherwise than by or under the authority of an Act of the Legislature—now require, with certain exceptions, a licence to entitle them to carry on business within the province, either themselves or by a broker, agent, or representative; but taking orders for or selling goods, wares, and merchandise by travellers or correspondence is not carrying on business within the meaning of the Act, if the corporation has no registered agent or office in Ontario. In granting licences the Lieutenant-Governor in Council may, *inter alia*, require evidence as to the origin and objects of the corporation. When licensed under the Act, a corporation may hold land in the province as if it were a home corporation. Notice of the granting of the licence is to be gazetted.

This Act, it may be noted, is only one instance of a growing policy on the part of the colonies to regulate immigrant trading corporations.

**Cold Storage** (No. 26).—This Act enables any five or more persons desirous of carrying on the business of storage of fruits, dairy products, animal products, canned goods, dried vegetables, and all similar food products to form themselves into an association for the purpose by signing and filing a certificate in a statutory form. Rules of management

are to be framed, the shares are to be transferable, and the liability of shareholders is to be limited. Disputes between the members are to be referred to arbitration. The Lieutenant-Governor in Council is empowered to make a grant—not exceeding \$500—towards the cost of any cold storage building for such association.

**Loan Corporations Act (No. 27).**—This amends the Building Societies and Other Loan Corporations Act of 1897 in certain particulars, such as increasing or decreasing the permanent capital stock, enlarging the scope of the investing powers, and prohibiting the use by an unregistered association of such words as “loan,” “mortgage,” “trust,” “investment,” or “guarantee,” in combination with “corporation.”

**Voting Machines (No. 37).** (*f*)—This has nothing to do with political organisation, but relates to certain mechanical contrivances for recording votes, and authorises their adoption by municipalities. It is a condition, however, that any voting machine must be constructed so as to provide facilities for secret voting.

**Shops Regulation (No. 43).**—This is a useful measure in furtherance of health. No shopkeeper is to sell any garment made in any dwelling-house or building without a permit from the inspector stating that the place of manufacture is thoroughly clean and otherwise in a good sanitary condition.

**Forest Fires (No. 45).**—To further prevent these disastrous conflagrations the Commissioner of Crown Lands is authorised to appoint forest rangers with power to prosecute offenders against rules, and to summon aid in emergencies to extinguish fires.

**San José Scale (No. 46).** (*g*)—Spraying, washing, or fumigation may be used—in lieu of burning—in the treatment of plants infested with this disease.

**Noxious Insects (No. 47).**—Any municipality may adopt this Act and make regulations under it for the prevention and destruction of insects injurious to trees, shrubs, and other plants.

**Barbary Shrub (No. 48).**—The planting of this shrub is prohibited upon any land used for farming purposes.

**Game (No. 49).** (*h*)—This Act amends and consolidates the Ontario Game Protection Act, and provides that no person not resident and domiciled in the province is by this Act to hunt or kill any game-bird or animal except on the terms of a licence to be first obtained. Special permits may be granted to guests of a resident. No hunting or shooting is to take place on Sunday. Close seasons are fixed for moose, elk, game-birds, squirrels, hares, swans, geese, snipe, plover, beavers, otters, muskrats, etc. Protection may be granted to migratory

(*f*) See *infra*, p. 293.

(*g*) See *supra*, p. 273.

(*h*) See *supra*, p. 248, and *infra*, p. 289.



and non-migratory birds in danger of extinction. A licence must be obtained to hunt deer, moose, reindeer, or cariboo. No person is to take deer in or leaving water. Hunting deer by "crusting" or "yarding" is declared unlawful. Yachts or steam-launches are not to be used to hunt wild ducks or geese, nor swivel guns nor "sunk punts." Poisoning is also prohibited, and trapping and snaring, except beavers, otters, and muskrats; so is shooting for hire, taking eggs, and going masked with firearms near preserves. No one is to sell game without a licence. No one is to trespass on enclosed land in pursuit of game after notice not to do so.

A Board of Game Commissioners is constituted to secure the observance of the above laws, with subordinate officers called "game wardens." Licensed guides may also be appointed. The Act is not to apply to Indians or settlers killing game for food.

**Fisheries (No. 50).** (i)—This is another elaborate Act regulating fisheries. Fishery overseers are to be appointed to enforce the regulations. Leases and licences to fish may be granted on proper terms. Nets and snares are not to be used without licence. Fish under a certain size are not to be sold. No person is to take more than fifteen pounds a day of speckled trout, no non-resident more than ten salmon in a day.

**Wolf Bounty (No. 51).**—This Act makes production of the head of the wolf before a justice of the peace sufficient evidence to secure the bounty in cases where the animal is killed at too great distance to render the ordinary procedure inapplicable.

**Public Schools (No. 53).**—An urban school board may by this Act expend a sum not exceeding \$200 in encouraging gymnastics and other athletic exercises.

**Industrial Schools (No. 56).**—This Act provides for placing out in a foster home any child who has been an inmate of an industrial school for three years.

**Municipal Sanatoria for Consumptives (No. 57).**—This Act empowers any municipality to establish and equip a sanatorium for the treatment of consumptives maintainable out of the rates, and to be managed by a board of five trustees; one-fifth of the cost may be contributed by the Lieutenant-Governor in Council.

**1901 (k)** Acts passed—112, of which 68 were Local or Private.

**Elections.**—No. 2 amends the Ontario Voters' Lists Act by allowing any one who will attain the age of twenty-one within thirty days from

(i) See *infra*, p. 281.

(k) Contributed by James S. Henderson, Esq.

the day fixed for hearing appeals, and who possesses the other necessary qualifications, to apply to have his name inserted in the voters' list, but no person has the right to vote who is not of the full age of twenty-one.

No. 3 amends the Ontario Election Act by making it an offence for any person to procure the appointment of deputy returning officer by false pretences or other improper means, or who acts as such officer without lawful authority. It is also made an offence for a deputy returning officer or poll clerk to wilfully miscount the ballot papers or make up a false statement of the result of the voting.

**Arbitration.**—No. 5 amends the Act respecting the settlement by arbitration of accounts between the Dominion and the Provinces of Ontario and Quebec, and between these two provinces, by providing that the arbitrators shall determine all questions of fact and law, that their decisions as to questions of fact are to be final, but their decisions on questions of law, including the question whether any matter presented to them is one of law, are to be subject to appeal to the Supreme Court of Canada and thence to the Privy Council, should his Majesty be pleased to entertain the appeal.

**Land Grant to Volunteers.**—No. 6 provides for the appropriation of land for those who served in the South African war or in the militia in defence of the frontier of the province in 1865-6 and 1870.

**Succession Duty.**—No. 8 amends the Succession Duty Act in several particulars. It defines "aggregate value," "dutiable value," and declares that in arriving at the dutiable value of the estate of a deceased person the value is to be taken as at the date of the death, and allowances are to be made for reasonable funeral expenses and for the deceased's debts and encumbrances. Any debt or encumbrance for which an allowance is made is to be deducted from the value of the land or other property, but no allowance is to be made (1) for debts or encumbrances incurred or created by the deceased unless incurred or created *bonâ fide* for value and for the deceased's own use and benefit, and to take effect out of his interest; (2) for any debt in respect of which there is a right to reimbursement, unless such reimbursement cannot be obtained; (4) more than once for the same debt or encumbrance charged upon different portions of the estate; (4) for the expenses of administration (except surrogate fees) or execution of any trust created by the will of the testator. S. 8 makes provision for the payment of duty in respect of future or contingent estates or interests.

**Sugar Beet Industry.**—No. 11 appropriates \$225,000 as a special fund for encouraging the growth of sugar beets and the establishment of factories within the province for the manufacture of refined sugar therefrom.



**Statute Law Amendment (No. 12).**—This is an “omnibus” Act to amend the statute law in various particulars.

*Limitation of Actions.*—S. 9 places the Crown in the same category as its subjects in respect of actions for penalties, damages, or sums of money given by any Statute; these must be commenced within two years after the cause of action arose.

*Appeals to Court of Appeal.*—S. 11 allows appeals to the Court of Appeal from decisions of general sessions allowing or dismissing appeals thereto under the Ontario Summary Convictions Act, without giving security on the appeal to the Court of Appeal, provided the Attorney-General for the Province certifies that a question of law of sufficient importance is involved.

*Master and Servant.*—S. 14 amends the law on this subject by enacting that where a person enters into an agreement under which he receives as an advance of wages, money, food, lodging, or railway or steamboat tickets, and thereafter, without his employer's consent, leaves his employment before repaying such advances, (1) he shall be liable on summary conviction to a penalty not exceeding \$25, or in default to imprisonment for a period not exceeding thirty days.

*Solicitors.*—S. 15 gives a solicitor or counsel whose remuneration is paid wholly or partly by salary the right to recover costs as if he were not paid by salary where the costs are payable to him as part of his remuneration in addition to his salary.

*Mines, Actions relating to.*—S. 17 provides that in actions against British subjects on foreign judgments respecting or arising out of mines or mining matters, any defence that might have been set up in the original action may be set up in the action on the judgment.

*Consumption Hospitals.*—By s. 28 these are not to be established or kept within 150 yards of an inhabited dwelling, except with the consent in writing of the local board of health. Any breach of this provision, after notice to desist, is punishable by a penalty of \$25 for each day on which, after notice, this offence is continued.

No. 26 enables municipalities to arrange for the establishment of such hospitals.

*Mechanics' Lien.*—S. 30 amends the Mechanics' and Wage Earners' Lien Act by providing that the property upon which the lien given by that Act attaches shall not extend to any public street or highway or to any work or improvement carried out thereon by or on behalf of a municipality.

**Summary Convictions.**—No. 13 amends in certain details the Ontario Summary Convictions Act. *Inter alia*, it enables the Supreme Court to provide by rules that no motion to quash any conviction or order

(1) Repealed by No. 10 of 1904, *infra*, p. 298.

shall be entertained unless security for costs is given by the defendant. S. 5 repeals the Statute 5 Geo. II. c. 19 (which deals with appeals to quarter sessions), so far as it was in force in Ontario.

**Trustee Investments.**—No. 14 amends s. 5 of the Trustee Investment Act in reference to the reserve capital, etc., of incorporated companies in which trustees may invest funds under their control.

**Land Titles.**—No. 16 provides for the cancellation of fraudulent entries as to title upon the conviction of the person guilty of the fraud, and meets the case of an innocent party obtaining a charge on the land during the subsistence of a fraudulent entry, by providing that the Master of Titles, instead of cancelling the wrongful entry, may make an entry in the register stating the fact of the conviction, and revesting the land in the rightful owner subject to the charge. S. 2 provides for the entry of persons taking by transmission from an unregistered owner.

**Companies.**—No. 18 amends in certain particulars the Companies Act. It enacts, *inter alia*, that the name of a company which has not for three consecutive years made an annual summary and statement of its affairs may be given to a new company unless the defaulting company, after notice, proves that it is still a valid and subsisting corporation.

**Insurance.**—No. 21 amends the Ontario Insurance Act. It defines "unearned premiums," provides as to the proportion of the deposit to be made by non-provincial friendly societies, as to the division of the insurance money where the beneficiaries designated by the assured have predeceased him, and as to the investment of surplus funds.

**Grants to Railways.**—No. 22, which appropriates grants out of the Consolidated Revenue for the construction of portions of certain named railways, imposes conditions on such companies, requiring them, for example, to use, as far as practicable, Canadian-built rolling stock, rails made in Ontario or Canada, and to treat their workmen fairly and reasonably in regard to board, provisions, clothing, and other necessities of life supplied by them, and provide suitable drainage. The Government is given the right to acquire at any time the lines so aided. There is also a provision against the charging of secret special rates, rebates, etc. The railways are also required to carry road-making materials at the actual cost of handling and carriage.

**Street Railways.**—No. 25 (*m*) requires every street railway which works any portion of its line by means of electricity to adopt and use in front of each motor-car a fender of a design to be approved by the Lieutenant-General in Council.

**Municipalities.**—S. 562 of the Municipal Act is amended by s. 19

(*m*) See *infra*, p. 292, and Repealing Act No. 30 of 1906, *infra*, p. 310.



of No. 12, the effect of which is to enable local authorities to make bylaws as to purchasing or otherwise acquiring harbours, and for selling and conveying same to purchasers.

No. 26 also amends in various respects the Municipal Act. It provides, *inter alia*, for the separation of farm lands from towns and villages, for the election of aldermen and councillors by wards, for the assessment of real property, and confers upon municipalities extended powers of making bylaws. In the case of a city with a population of 50,000 or more, the council may by bylaw authorise the remuneration of the county court judge for his services as a member of the Board of Police Commission. Bylaws may also be passed as to the inspection of wires and other apparatus used in connection with the transmission of electricity for purposes of light or power along public streets or highways, or on or in any building within the municipal area; for prohibiting immoral plays and entertainments in theatres, etc., and such bylaws may also authorise the police authorities, upon the written instructions of the chairman of the Board of Police Commissioners to enter any theatre, hall, or place of public amusement, and if, at the request of the police official, such immoral or indecent play, sketch, or performance is not stopped forthwith, the performers may be arrested without warrant and taken as soon as practicable before a justice of the peace; for prohibiting the conveyance of traffic in any but one direction in narrow streets; for authorising gas, water, or pneumatic transit companies to lay down pipes for the conveyance of water, gas, or merchandise under streets. The power of councils to make bylaws "for regulating the assize of bread" is amended by the provision that no such bylaw is to apply to bread sold in loaves to which are attached labels showing the weight to be not more than the actual weight of the same. The licensing and regulating of laundries may also be dealt with by bylaws; and this species of municipal legislation may also be applied to prohibit the giving of trading stamps and coupons, but this is not to apply to any merchant or manufacturer who places in or upon packages of goods tickets or coupons to be redeemed by him in money or merchandise. The giving of tickets, checks, or coupons by dealers in milk, bread, or other articles of food may also be regulated. Municipalities are also given power to arrange for the establishment of consumption hospitals.

**Reception of the Duke and Duchess of Cornwall and York.**—No. 28 authorises municipalities to include in their estimates and expend such sums as may be deemed prudent in according a fitting reception to their Royal Highnesses during their visit to Canada.

**Assessment.**—No. 29 (*n*) deals with the assessment of real property

(*n*) Repealed by No. 23 of 1904, *infra*, p. 301.

extending over more than one ward in a city or town, and of bridges on international boundaries.

**Drainage.**—No. 30 allows an appeal from the Referee, acting under the Construction of Drains Act, as to the incidence of the cost of drainage repairs between two or more municipalities, to the Court of Appeal for Ontario, whose decision is to be final. Another section enacts that all applications to set aside or otherwise attack the validity of any report, bylaw, etc., relating to drainage works, and the settlement of all disputes thereon, are to be dealt with by the Referee.

**Highways.**—No. 32 (*o*) appropriates the sum of \$1,000,000 for road improvements, and makes provision as to the method of its application.

**Tolls.**—No. 33 enables local authorities to take steps to secure the abolition of tolls on roads, and prescribes the procedure to be followed in case of failure to arrive by agreement at the amount to be paid to toll-owners for the cesser of their rights.

**Factories.**—No. 35 amends the Factories Act by imposing in terms upon factory owners the obligation of providing sanitary conveniences. It also makes provision for the separate storage of inflammable materials, for the inspection of boilers, and for the provision of fire-escapes. It further prohibits the commencement of work in factories thereafter to be established, to which this Act applies, until a certificate of inspection has been given by the factory inspector.

**Shops.**—No. 36 imposes upon shopowners the obligation of providing sanitary conveniences, and applies certain provisions of the Factories Act to shops where grinding, polishing, or buffing is carried on. It also limits the hours of labour in bakeshops, and both in these shops and barbers' shops Sunday labour is prohibited.

**Fisheries.**—No. 37 (*p*) enables the Lieutenant-General in Council to make regulations for the management of Crown lands leased under the Act and the fishery rights pertaining thereto; and to forbid fishing in any waters within the province except under licence. No fish or fish spawn is to be taken from provincial waters for breeding or scientific purposes without the written permit of the Commissioner of Fisheries. The powers of fishery overseers as to the placing, etc., of nets are defined. Records are to be kept by fish companies and fish dealers of the purchases by them of fish taken within provincial waters, with the date of purchase and the name and address of the seller; such records are to be open to the inspection of the overseers and a monthly abstract furnished to the Fisheries Department. Certain kinds of fish—speckled trout, bass, or maskinonge—taken or caught in provincial waters are not to be sold, bartered, or trafficked in before July 1, 1903. Sturgeons are not to be taken without a licence. Wasteful or excessive fishing,

(*o*) See *infra*, p. 294.

(*p*) See *supra*, p. 276.



likewise fishing during prohibited seasons, involves the cancellation of the offender's lease, licence, or permit.

**Education.**—A series of Statutes deals with this important subject.

No. 38 establishes and defines the powers, etc., of the Department of Education.

No. 39 (*q*) is the Public Schools Act. All schools established under it are to be free, and open to every person between the age of five and twenty-one. No pupil is to be required to read or study in or from any religious book, or to join in any exercise of devotion or religion, objected to by his or her parents or guardians, but pupils may receive such religious instruction as their parents or guardians desire them to have. Provision is made for continuation classes where there is no high school. The educational machinery—boards, trustees, powers of county councils, and the duties, etc., of teachers—is also dealt with.

No. 40 is the High Schools Act. It deals with their establishment and constitution, the course of study, fees, examinations, and the appointment, qualifications, and duties of teachers.

No. 41 is the University Act, (*r*) and it deals with the University of Toronto and University College, its property and income, course of instruction, and the federation of other colleges. No religious tests are to be required.

No. 42 amends the Upper Canada College Act by exempting all its property from taxation.

No. 43 amends the Industrial Schools Act by providing that the parents or guardians of a child maintained in an industrial school may be compelled to recoup the cost incurred by any local authority in respect of such maintenance.

No. 44 enables the Kingston School of Mining to teach additional subjects, empowers two or more townships to grant financial aid to the school, and otherwise makes provision as to its property.

**1902** (*s*) Acts passed—116, of which 73 were Local or Private.

**Statute Law Revision.**—No. 1 repeals the various enactments mentioned in the schedule, and in addition introduces numerous amendments of the Statute Law. (*t*)

**Devolution of Estates.**—S. 4 enacts that the lands of a deceased person which have become vested in his heir or devisee under s. 13 of the Devolution of Estates Act shall remain liable for the deceased's debts as they would be if vested in the deceased's personal representative,

(*q*) See *infra*, p. 313.

(*r*) See *infra*, pp. 290, 302, and repealing Act No. 55 of 1906, *infra*, p. 313.

(*s*) Contributed by James S. Henderson, Esq.

(*t*) See also No. 12, *infra*, p. 284.

and in the event of a *bonâ fide* sale thereof for value by such heir or devisee, he shall be personally liable for the deceased's debts to the extent of the proceeds of such lands, and in case the sale shall not have been *bonâ fide*, then to the extent of the actual value of the lands. S. 5 protects a *bonâ fide* purchaser for value without notice of debts. S. 6 provides that property over which a deceased person has exercised by will a general power of appointment shall be assets for the payment of his debts. S. 7 abolishes lineal and collateral warranties at Common Law with all their incidents. (u)

*Gaming Debts.*—S. 8 amends the Act 9 Anne, c. 19, by providing that all notes or other securities or conveyances given or executed where the consideration therefor is either in whole or in part money or other valuable thing won by gaming or playing at cards, dice, tables, tennis, bowls, or other game or games whatsoever, or by betting on the sides or hands of persons gaming at any of these games, or for the reimbursing or repaying any money knowingly lent or advanced for such gaming or betting, or lent or advanced at the time and place of such play to any person so gaming or betting, are to be deemed to have been made for an illegal consideration. S. 9, which reproduces s. 2 of the English Gaming Act, 1835, (x) provides that money paid to the holder of such securities shall be deemed to be paid on account of the person to whom such security was originally given, and be deemed to be a debt due from such person to the person who shall have paid the money, and be recoverable by action.

*Mandamus.*—S. 10 deals with the returns to be made to writs of mandamus. In the case of a false or insufficient return, the Court may order the person making such return to pay to the applicant for the writ such damages as may be occasioned by the return.

*“Quo Warranto” Proceedings.*—Ss. 11–16 relate to these proceedings. The writ of *quo warranto* is superseded in most cases, and notice of motion where the proceeding is by the Attorney-General, or rule *nisi* in other cases, substituted. Where it is intended to call in question the right of municipal and school officers to hold office, the question is to be tried and determined in a summary manner by the county court judge.

*Proceedings by Crown.*—S. 17 provides that no entry, distress, action, etc., shall be made or brought on behalf of the Crown after sixty years from the time when the right first accrued. S. 18 defines when the right of entry, etc., is to be deemed to have first accrued. Waste lands of the Crown are by s. 19 excepted from the provisions of ss. 17 and 18. S. 21 abolishes writs of extent and writs of extent in aid, and all other prerogative process for the recovery of debts due to the Crown or to Crown debtors, and makes these debts recoverable by the ordinary process.

(u) See also No. 17, *infra*, p. 285.

(x) 5 & 6 Will. IV. c. 41.



*Distress.*—S. 22 amends s. 1 of 2 Wm. & Mary (2nd Session), c. 5, so far as operative within the province, by enacting that no goods distrained shall be sold till five days after distress and appraisement.

**Mortmain and Charitable Uses.**—No. 2—the Mortmain and Charitable Uses Act—is practically a reproduction, with the necessary alterations to make it applicable to the province, of the English Mortmain and Charitable Uses Act, 1888. (*y*) It provides also by ss. 12 and 13 that where there has been a breach or supposed breach of a charitable trust, two or more persons may by petition signed by them in the presence of, and attested by, their solicitor, and certified by the Attorney-General of the province, bring the matter before the Court, which may hear and dispose of same in a summary way.

**Manhood Suffrage Registration.**—No. 6 (*z*) amends in certain details the Manhood Suffrage Registration Act. S. 4 provides that the bribery clause in the oath administered to a person applying for registration is only to be included where the agent for a candidate or political organisation or the registrar deems its insertion expedient.

**Agriculture and Arts.**—No. 10 is the Agricultural and Arts Amendment Act, which alters in certain details the principal Act. It includes within the scope of the Act the formation of women's institutes for the purpose of improving rural home life and of imparting information in regard to women's work upon the farm.

**Statute Law Amendment** (No. 12).—This is an "omnibus" Act, to amend the law in various particulars. (*a*)

*Holidays.*—S. 1 amends the definition of "holiday" given in the Interpretation Act by including Victoria Day.

*Voters' Lists.*—Part III. of the Ontario Voters' Lists Act (which deals with the lists for unorganised territory) is suspended by s. 2 (*b*) for three years, unless during that time the Lieutenant-General in Council otherwise orders; it may in particular be brought into force in the case of a vacancy occurring in the representation of any electoral district in the Legislative Assembly.

*Judicature.*—S. 7 provides that the President of the High Court shall be that one of the Presidents of the King's Bench, Chancery, or Common Pleas divisions who, for the time being, is first in order of seniority; in case of his absence or illness, his duties may be performed by the President of any division. S. 8 provides that where, after a cause has been heard in the Court of Appeal and stands for judgment, a vacancy occurs on the bench, the remaining judges, or in case there is a difference of opinion, a majority of them, may give judgment.

(*y*) 51 & 52 Vict. c. 42.

(*z*) See *infra*, p. 307.

(*a*) See also No. 6, *supra*.

(*b*) Repealed by No. 10 of 1904, *infra*, p. 297.

*Police Magistrates.*—S. 13 enables the Lieutenant-General in Council to appoint a second police magistrate for any city of not less than two hundred thousand inhabitants at a salary not exceeding \$1500.

*Certiorari.*—S. 14 enacts that no conviction or order by magistrates is to be removed into the High Court by *certiorari* except where an appeal to sessions would not afford an adequate remedy.

*Petty Trespass.*—S. 17 amends s. 1 of the Petty Trespasses Act by including a garden and lawn, along with other enclosed premises, over which a trespass punishable under that Statute may be committed.

*Mutual Fire Insurance.*—S. 22 amends s. 8 of the Ontario Insurance Act (which enabled the freeholders in any municipality to call a meeting of freeholders to consult whether it was expedient to establish in the municipality a fire insurance company, upon the mutual or cash-mutual principle) by making a certificate of the Minister, to the effect that there exists in the municipality no adequate provision for fire insurance on the mutual plan, a necessary preliminary to the calling of a meeting of freeholders. The principal Act is further amended with regard to insurances with foreign unregistered companies.

*Liquor Licences.*—S. 25 repeals s. 105 of the Liquor Licence Act, which provided that a conviction for any offence under the Act should not be void for defects in form. (c)

*Oaths in Judicial Proceedings.*—S. 29 authorises the use of the Scotch form of oath.

*Imperial Statutes.*—No. 13 provides for the incorporation of Imperial Statutes in the printed roll of the revised, classified, and consolidated Statutes of the province, adapting their form and language to the said revised Statutes, but without changing their effect.

*Jurors.*—No. 14 (d) amends the Jurors' Act. In any county the selectors of jurors may determine that the general sessions of the peace shall be held immediately after the sittings of the High Court for jury trials, whereupon the jurors for the High Court and the inferior courts are to be the same, and summoned at the same time. Where there is no business for a jury, the jury summonses are to be countermanded; but if any juror attends, owing to the non-receipt in time of such countermand, he is to receive his mileage and fees as heretofore. The Act is not to apply to any county in which a city is situated.

*Expert Witnesses.*—No. 15 limits the number of expert witnesses in legal proceedings to three on each side, unless the presiding judge or arbitrator gives leave to call more, such leave to be applied for before the examination of any of the experts who may be examined without leave.

*Devolution of Estates.*—No. 17 amends in certain particulars the

(c) See also No. 33, *infra*, p. 288.

(d) See *infra*, p. 304.



Devolution of Estates Act. It *inter alia* enables an administrator or executor to lease or mortgage lands for the purpose of paying the debts of the deceased.

**Wills.**—No. 18 is the Wills Act. It adopts for the province Lord Kingsdown's Act, (e) making wills of personalty executed out of Ontario good for the purpose of probate if made according to the forms required by (1) the law of the place where made; or (2) the law of the testator's domicile at the time of the making of the will; or (3) the law of the testator's domicile of origin. Change of domicile is not to revoke will.

**Removal of Obstructions in Rivers.**—No. 20 enables the Commissioner of Public Works, upon giving notice to persons interested, to take steps to remove obstructions from rivers and watercourses. Compensation is to be paid to persons affected by such work.

**Mechanics' and Wage-Earners' Lien.**—No. 21 amends the principal Act by making further provision for the registration of a contractor's lien in respect of work done under a contract which is under the supervision of an architect or engineer.

**Trade Disputes.**—The principal Act on this subject (f) is amended by No. 22, which provides that if any difference shall arise between a corporation or person employing ten or more employees and such employees, threatening to result or resulting in a strike or lock-out, the Registrar of the Councils of Conciliation and Arbitration shall, when requested in writing to do so by five or more of such employees, or by the employers, or by the mayor or reeve of the municipality within which the industry is situated, visit the place of such disturbance, "and diligently seek to mediate between such employer and employees." The Registrar is directed to promote conditions favourable to a settlement by endeavouring to allay distrust and causes of friction and bring about agreements between employers and employees for the submission of their disputes to arbitration before resorting to strikes or lock-outs.

**Marriage.**—No. 23 amends the Marriage Act by setting out the table of prohibited degrees of consanguinity and affinity, which is to be printed on forms of affidavit to be made by parties about to contract marriage.

**Companies.**—No. 24 (g) amends the Companies Act. Directors are not to vote on contracts in which they have a personal interest, but a director is not to be deemed to be interested in a contract, nor be disqualified from voting, by reason of holding shares or being a director in any other company with which a contract is made or contemplated. The Act further provides that deeds signed and sealed by a person on behalf of the company as its attorney shall have the same effect as if

(e) 24 & 25 Vict. c. 114.

(f) Rev. Stat. No. 153.

(g) See *supra*, p. 269.

they were under the seal of the company. Bylaws may be made by a company as to the issuing of bonds.

No. 28 makes provision in the case of the distribution of assets in winding up for the payment into court of debts due to infants and other persons under disability.

**Street Railways.**—The provisions of the Street Railways Act requiring the use of a fender in front of each motor-car are by No. 26 (*h*) made applicable to every street railway company now or hereafter established under any special Act of the province, and are to be incorporated with such special Acts.

**Electric Railways.**—No. 27 (*i*) deals with this subject. A Railway Committee, consisting of the Commissioner of Public Works and two other members of the Executive Council of Ontario appointed by the Lieutenant-Governor, is set up, and jurisdiction over railways, electric railways, and street railways conferred upon it. Electric and street railway companies may enter into agreements with other companies as to running powers and interchange of traffic; such agreements so far as operative within any municipality are to be subject to the assent of the municipal council, or in case of refusal of such consent, of the assent of the Railway Committee, who are given extensive powers of inquiry. The Railway Committee may state cases for the opinion of the court. The Act makes the following provisions as to the construction of railways on highways: The rails are to conform to the grade of and to be flush with the street, and the space between the rails and for eighteen inches on each side is to be maintained by the company; the speed of cars on any highway is not to exceed fifteen miles an hour, unless the Railway Committee authorise a greater speed; vestibules are to be provided on motor-cars during the winter months, for the protection of those in charge; contravention of this provision exposes the company to a penalty of \$10 for each day on which any motor-car is run without such vestibule.

**Municipalities.**—No. 29 amends the Municipal Act in various respects. It enables corporations to make agreements with the owners of farm-lands as to the rate of taxation to which the same shall be subject for any period not exceeding five years at a time; bylaws may be made giving effect to such agreements, but such bylaws, to be valid, must be approved by a vote of not less than two-thirds of the corporation. Provision is also made for reducing the area of towns and villages in unorganised territory; as to the constitution of councils in cities; as to scavenging; as to making bylaws in respect of the transmission of electricity over streets, etc.

(*h*) See *infra*, p. 292, and repealing Act No. 30 of 1906, *infra*, p. 310.

(*i*) See *infra*, p. 292, and repealing Act No. 30 of 1906, *infra*, p. 310.



No. 32 deals with municipal drainage. It enables the engineer or surveyor to include in his estimate of the cost of drainage work a sufficient sum to compensate the owners of low-lying lands for injuries they may sustain from the drainage work, in cases where the cost of continuing such drainage work to a point where the discharge of water would do no injury to lands and roads would be greater than the amount of injury likely to be caused to low-lying lands below the termination of the work.

**Incorporation of Towns in Territorial Districts.**—No. 30 relates to this subject. It makes provision for the proclamation of incorporation, the powers of towns so incorporated, the composition of their councils, and the conduct of elections.

**Assessment.**—No. 31 (*k*) makes further provision as to assessment of property. The land of companies for supplying water, heat, light, and power, telephone and telegraph companies, street and electric railways, are to be assessed in the city ward where the head office is situated. Superstructures and substructures of such companies are declared to be “land,” but the plant, poles, and wires used exclusively in running trains are to be exempt from municipal assessment or taxation. Rolling stock also is not assessable; provision is also made with regard to bridges over international boundary lines.

**Intoxicating Liquors.**—No. 33 is the Liquor Act (*l*). Part I. provides for the question whether the Act shall be adopted or not being referred to the electorate, a definite majority of votes being requisite before Part II. of the Act can become operative. Part II. limits the sale of intoxicating liquor within the province. Two kinds of licences are dealt with—the druggist’s wholesale licence and the druggist’s retail licence. Under the first of these the licensee may sell alcohol not exceeding in quantity ten gallons at any one time to any person for mechanical or scientific purposes; and may sell to any qualified medical practitioner and to any licensed retail druggist, but to no other, liquor not exceeding in quantity five gallons at any one time. Under the druggist’s retail licence the licensee may sell liquor for medical and sacramental purposes only. Provision is made for ensuring that such sales are for one or other of the purposes allowed under the Act. Except under such a licence no person shall sell or keep for sale any intoxicating liquor, or keep or give liquor in any premises other than in his private dwelling-house. Further, no person shall use or consume liquor in the province purchased or received from any person within the province, unless it be purchased and received from a licensee, but

(*k*) See *supra*, p. 272, and repealing Act No. 23 of 1904, *infra*, p. 301.

(*l*) This Act, when submitted to the voters, did not receive the majority requisite for its becoming operative.

this section (156) is not to apply to any person who, within a private dwelling-house, innocently uses and consumes liquor not thus purchased or received. No person other than the father, mother, or guardian, or a duly qualified medical practitioner, is to sell or give liquor to a minor, and then only for medicinal purposes.

**Public Health.**—No. 34 amends the Public Health Act, by declaring that no hospital for consumptives shall be established without the permission of the local board of health.

**Factories.**—No. 36 amends the Factories Act by requiring that a sufficient number of iron or other non-inflammable fire-escapes shall be provided on the outside of factories.

**San José Scale.**—No. 37 amends the San José Scale Act, 1898. (*m*) It requires the owner or lessee of any orchard or collection of plants, other than a nursery, to destroy by fire or effectually fumigate any plant infested with the scale.

**Barberry Shrub.**—No. 38 prohibits the planting, cultivation, or sale of barberry shrub. Hedges or fences formed of the shrub may, on certain conditions being fulfilled, be ordered to be destroyed—compensation being allowed therefor.

**Game.**—No. 39 (*n*) specifies the period during which various kinds of game may be hunted or killed. For moose, reindeer, or caribou, the open season is from November 1st to November 15th in certain parts of the province, and from October 16th to November 15th in certain other parts; quail or wild turkeys may only be taken during November. The wood-hare or cotton-tail rabbit may be taken or killed where it is shown to cause actual damage to trees or shrubs.

**Education.**—There are several Statutes relating to this subject.

No. 40 amends the Public Schools Act. It enables, *inter alia*, provision to be made for the conveyance of pupils from rural school sections to urban schools. It further provides for manual training and domestic science classes.

No. 41 amends the Separate Schools Act. Continuation classes may be provided by the separate school board where there is no high school in the district; to these classes only pupils may be admitted who have passed the entrance examination to a high school, or some higher examination, or whose qualification for admission has been approved by the principal of the school and the separate school inspector.

No. 42 amends the High Schools Act. This, *inter alia*, enables free scholarships to be awarded by the board of trustees to the pupils of public or separate schools within the municipality. Sums not exceeding \$300 in cities of 100,000 or more, and not exceeding \$150 in other

(*m*) See *supra*, p. 275.

(*n*) See *infra*, p. 302.



municipalities, may be annually voted by the board of trustees for the encouragement of athletics and the expenses of school games.

No. 43 amends the University Act, 1901 (o), in regard to the assessment of property occupied by professors, the limitation of actions against the trustees, and various other matters.

**1903 (p)** Acts passed—133, of which 95 were Local or Private.

**Statute Law Amendment.**—No. 7 amends the law in various particulars:

*Holidays.*—S. 2 provides that whenever a holiday falls on a Sunday the following day is to be the legal holiday throughout the province.

*Corrupt Practices.*—S. 5 amends the Election Act by providing that where the trial judges disagree as to whether a candidate or his agent has committed a corrupt practice an appeal lies to the Court of Appeal, which, if of opinion that a corrupt practice has been committed, shall declare the election void, unless the Court decides that the corrupt practice has been committed in excusable ignorance, or has been committed by an agent without the knowledge of the candidate; but the candidate is not to be disqualified.

*Removal of Disqualifications.*—S. 6 amends the Act respecting the Legislative Assembly by providing that a person holding any temporary employment in the service of the Dominion of Canada requiring professional skill is not ineligible or disqualified from sitting and voting in the Legislative Assembly.

*Surrogate Courts.*—S. 11 enacts that where a judge of a county court who is also judge of the Surrogate Court vacates his county court judgeship he thereby vacates his judgeship of the Surrogate Court.

*Arbitration.*—S. 16 repeals s. 8 of the Arbitration Act (which was a reproduction of s. 6 of the English Arbitration Act, 1889 (q)) and substitutes more extensive provisions as to the appointment of arbitrators.

*Purchase of Equity of Redemption.*—S. 18 amends the Execution Act by adding a provision that the purchaser from a sheriff or other officer of the equity of redemption in any personal property is not personally liable to pay or satisfy any encumbrance on the property.

*Appeals to General Sessions.*—S. 21 amends the Ontario Summary Convictions Act by providing that appeals to General Sessions from convictions or orders shall be heard by the chairman of the Court of General Sessions without a jury, unless upon the application of either party the chairman shall otherwise order.

(o) See *supra*, p. 282, and repealing Act No. 55 of 1906, *infra*, p. 313.

(p) Contributed by James S. Henderson, Esq.

(q) 52 & 53 Vict. c. 49.

*Barrister or Solicitor Trustees.*—S. 27 amends s. 43 of the Trustee Act by providing that where a barrister or solicitor is a trustee, executor, or administrator, and has rendered necessary professional services to the estate, an allowance may be made to him in respect of such services.

*Assignments for Benefit of Creditors.*—S. 29 repeals s. 11 of the Act respecting assignments and preferences by insolvent persons, and substitutes a provision which gives precedence to an assignment for the general benefit of creditors over attachments, garnishee orders, judgments, and executions not completely executed by payment, and of orders appointing receivers by way of equitable execution, subject to the lien for costs of the execution creditor, or the first of them, if more than one.

*Guardian of Infants.*—S. 31 amends the Infants Act by enabling the Court to appoint a guardian to an infant, whether the infant is or is not entitled to any property.

*Companies.*—S. 35 amends the Ontario Companies Act by providing that the shareholders of a company with more than six directors may by bylaw empower the directors to delegate any of their powers to an executive committee, of not less than three, to be elected by the directors from their number.

*Benevolent and Provident Societies.*—S. 38 amends the law on this subject by enabling the Lieut.-Governor in Council to suspend or revoke the corporate powers of such societies, not only when they are using their powers for fraudulent or other unlawful purposes, but also when a society "is reputed to be maintaining or using a place for any gambling or unlawful gaming purpose."

*Traction Engines on Highways.*—By s. 43 the requirement cast upon persons using traction engines on highways, where no tolls are levied, to strengthen bridges and culverts at their own expense is declared not to extend to engines used for threshing purposes or for machinery used in the construction of highways.

*Factories.*—By s. 45 no bedroom or sleeping place is permitted to be on the same floor of a building as a shop, bakehouse, or factory, and sleeping places are only to be allowed in the same building as a shop, bakehouse, or factory with the written consent of the inspector.

*Lunacy.*—S. 49 amends the law on this subject by enacting that where a person who is discharged from an asylum is not in the opinion of the inspector competent to manage his affairs, the inspector who has in his hands any property of such person as committee may apply to the Court to be relieved from his trust.

*Judicature.*—No. 8 divides the High Court of Ontario into four divisions instead of three as formerly: the King's Bench, Chancery, Common Pleas, and Exchequer—the last mentioned being the new



division. S. 12 enables the Court of Appeal to sit in two divisions when pressure of business requires this arrangement, the additional judges necessary to enable this to be carried out being selected from the High Court judges.

**Mortgages.**—No. 11 (*q*) provides that in the case of mortgages made after the passing of the Act the mortgagor in default may, notwithstanding any agreement to the contrary, redeem on giving three months' notice, or on paying three months' interest in lieu of notice.

**Land Titles.**—No. 12 deals with the Assurance Fund created by the Land Titles Act, excludes claims upon it in certain cases, as *e.g.* where the claimant's negligence has contributed to loss, and in other respects amends the former Act.

**Conditional Sales of Chattels.**—No. 13 amends the law on this subject by making void conditions or agreements in lien notes, hire receipts, or contracts for the conditional sale of chattels, enabling the plaintiff in any action arising out of such contracts to select his venue, unless at the time when the contract is entered into there was a clause printed in type not smaller than small pica in red ink and subscribed by the maker thereof in the following words: "Any action which may be brought or commenced in a Division Court in respect or on account of this note, hire receipt, or contract may be brought and commenced against the maker or person liable hereon in a Division Court other than where he resides or in which the contract was made."

**Insurance.**—No. 15 amends the Insurance Act. It requires that a director shall be the *bonâ fide* holder of fully paid shares of at least \$1,000 in the company. It also enables the assignee of money payable, under a policy to sue in his own name; it validates payments made to a payee domiciled or resident in a foreign jurisdiction where such payments are valid by the law of such jurisdiction whether the payee received the money in his own right or in a representative capacity; and it empowers the assured to nominate beneficiaries in lieu of the "preferred beneficiaries" who may have predeceased him.

**Loan Corporations.**—No. 16 amends the Loan Corporations Act (*qq*) in various particulars, as to the securities on which money may be lent, the limit of deposits, etc.

**Street Railways.**—No. 17 (*r*) amends the law on this subject by enacting that where the cars of a company are provided with fenders of a class approved by the Lieutenant-Governor in Council the company is not to be liable for non-compliance with any bylaws or agreements relating to the class of fenders to be used in any city.

**Municipalities.**—No. 18 is the Municipal Amendment Act. It

(*q*) See *infra*, p. 316.

(*qq*) See *infra*, p. 300.

(*r*) See *infra*, p. 299, and repealing Act No. 30 of 1906, *infra*, p. 310.

amends the principal Act in several particulars. It deals, *inter alia*, with the method of annexing a village or town to an adjacent city, town, or village; as to the powers and composition of county councils; as to the councils of towns—the composition of the council varying according to the population; as to voting at elections and punishment of corrupt practices; as to the investigation of charges of malfeasance; as to the authentication, etc., of bylaws; as to the issue of debentures under money bylaws; as to the apportionment of the cost of maintenance of persons committed to houses of refuge. It further enables bylaws to be passed providing for the submission to a vote of the electors at any annual municipal election of any question not specifically authorised by law and as to the procedure on voting. The powers of municipalities are extended by enabling them to prohibit (1) the placarding of bills, etc., which are either indecent or may tend to corrupt or demoralise the public or individuals, and (2) spitting on sidewalks, in public halls and conveyances. Bylaws may also be passed for the compulsory commutation of statute labour in unincorporated villages. Municipalities are further empowered, subject to the consent of the Lieutenant-Governor in Council, to establish and work fuel-yards in anticipation of and during a period of scarcity of fuel or such threatened scarcity as may appear to create an emergency; they may also construct and work ferries; they may pass bylaws for the application of the betterment principle in carrying out local improvements.

No. 19 (*s*) is the Consolidated Municipal Act, which runs to no fewer than 759 sections, being thus longer than the Merchant Shipping Act, 1894 (*t*), the longest statute passed by the Imperial Legislature. The Act, which consolidates the whole law on the subject, including the provisions of the preceding Act, is divided into nine parts dealing respectively with (1) municipal organisation, (2) the composition of municipal councils, (3) elections, (4) meetings of municipal councils, (5) principal officers, (6) general provisions, (7) powers of municipal councils, (8) recovery of fines, (9) police villages.

No. 20 (*u*) amends the Act to permit municipalities to use voting machines by enacting that machines are to be kept locked and sealed for thirty days after an election.

No. 22 is the Municipal Drainage Act. It enables municipalities to appoint two residents as “drainage viewers,” whose duty is to accompany the engineer in laying out or repairing drainage works and to assist in the assessment of the properties affected; they are to be paid \$2 a day and necessary travelling expenses. Engineers or surveyors appointed to

(*s*) See *infra*, pp. 301, 305, 313.

(*t*) 57 & 58 Vict. c. 60.

(*u*) See *supra*, p. 275.



perform any work under the Act are to furnish detailed accounts under oath.

No. 24 amends the Municipal Waterworks Act by enabling municipalities to nominate and appoint, subject to the approval of the electors, the first commissioners under the Act, or provide for their election.

No. 25 is the Municipal Power Works Act, which enables municipalities to acquire, construct, maintain, and operate all necessary works, plant, machinery and appliances for the development, generation, transmission, transformation, distribution, and supply of electrical and other power and energy, including heat and light. Commissioners may be appointed to report on a scheme, and on the receipt and publication of their report the question of proceeding with the scheme may be submitted to the electors, and in the event of a majority being favourable to the scheme, commissioners are to be appointed for carrying it out.

**Assessment.**—No. 21 (*x*) amends the Assessment Act by more clearly defining what public educational institutions and other property are exempt from taxation. It further exempts from taxation incomes not exceeding \$1,000 derived from personal earnings, and incomes to the amount of \$400 derived from any source other than personal earnings.

**Highways.**—No. 26 amends the Improvement of Public Highways Act. (*y*) It deals with the annual grants for county roads, and gives county councils in respect of county roads the same powers as those given by the Snow Fences Act to townships, cities, towns, and incorporated villages of requiring owners and occupiers of lands bordering upon public highways to alter or remove any fences which cause an accumulation of snow or drift and so impede or obstruct such public highways, compensation being made. County councils are exempt from building, maintaining, or repairing of sidewalks on county roads.

**Motor Vehicles.**—No. 27 (*z*) is the Motor Vehicles Act. The term “motor vehicle” is defined as including “automobiles, locomobiles, and all other vehicles propelled otherwise than by muscular power, excepting the cars of electric and steam railways, and other motor vehicles running only upon rails or tracks; but nothing in this Act contained shall be construed to apply to or affect bicycles, tricycles, or such other vehicles as are propelled exclusively by muscular pedal powers.” Owners of motor vehicles require to be registered and to have a numbered permit exposed on such vehicle, and also attached to or exposed upon the back in a conspicuous place the number of the permit, so as to be plainly visible at all times during daylight, the

(*x*) See *supra*, p. 288, and repealing Act No. 23 of 1904, *infra*, p. 301.

(*y*) No. 32 of 1901, see *supra*, p. 281, and *infra*, p. 305.

(*z*) See *infra*, p. 299, and repealing Act No. 46 of 1906, *infra*, p. 312.

number to be in plain figures not less than three inches in height. Motor vehicles are to be equipped with a light and also with a bell, gong, or horn, and the same is to be sounded whenever reasonably necessary. In any city, town, or incorporated village the speed is not to exceed ten miles an hour; outside the city, etc., the speed limit is fifteen miles per hour, and the speed is to be decreased at intersecting roads and on bridges. Municipal councils may by bylaw set apart any public street on which motor vehicles may be run at higher speeds for test purposes. Driving motors on public highways, in parks, etc., in a race or for a bet or wager is forbidden. Reasonable precautions are to be taken not to frighten horses.

**Travelling Shows.**—No. 28 requires a licence to be obtained by the person in charge of travelling shows before exhibitions are given. An inspector of criminal investigation may be directed to be present at shows; and the police are to have free access to them at all times.

**Public Health.**—No. 29 amends the Public Health Act by empowering medical officers of health to enter lodging-houses at any time where there is reason to suspect overcrowding, and to give directions for the abatement of overcrowding or of nuisances arising from the filthy or unclean condition of premises.

**Protection of Children.**—No. 30 amends the Children's Protection Act. It provides for the appointment in each electoral district of a committee consisting of six persons or more, half of them to consist of women, to be known as the "Children's Committee," each member being known as a "children's agent." The committee is to co-operate with the Superintendent of Neglected and Dependent Children and with the Children's Aid Societies, and to assist in the work of improving the condition of neglected and dependent children, in the careful selection of foster homes, and in the visitation of children placed in selected families. The committee is, further, to aim at promoting and encouraging a philanthropic sentiment on behalf of neglected, abandoned, and destitute children, and endeavour to obtain voluntary subscriptions for the effective carrying out of the objects of the Act. A child apparently under the age of sixteen who is charged with an offence may, without a conviction, be ordered to be placed under the care of a probation officer, who may be a member of the Children's Committee and who is expected to take a personal interest in the child. No child under the age of fourteen charged with an offence is to be committed to any gaol or police station pending trial. Such a child is, if possible, to be admitted to bail and to be placed in the custody of some relative, friend, or benevolent person willing to be responsible for the child's appearance; if bail cannot be procured, the proper officer is authorised to contract for the temporary care and



maintenance of the child with any association or individual possessing facilities for the safe-keeping and proper care of children until the case is disposed of, the expense to be borne by the municipality in which the child has last resided for one year. (a)

**Education.**—No. 31 sets up Boards of Education in cities having 100,000 inhabitants or more, by whom school inspectors are to be appointed. Such Boards may make provision for special and advanced courses of instruction in high schools.

No. 33 amends the High Schools Act as to grants in aid to high schools by county councils and in certain other respects.

No. 36 (b) enables the Lieutenant-Governor in Council to set apart certain Crown lands for the use of Toronto University.

No. 37 amends the Industrial Schools Act. It enables any person to bring before a special sitting of a police or county Court any child apparently under the age of sixteen who comes within any of the following descriptions:—

- (a) who is found persistently begging . . . or who is without a settled home ;
- (b) who by reason of long neglect cannot be satisfactorily dealt with by a Children's Aid Society ;
- (c) who having been made a ward of a Children's Aid Society, and failing to do well in a foster home, is certified by the Superintendent of Neglected and Dependent Children to be in need of further training or discipline ;
- (d) who by reason of neglect, drunkenness or other vices of the parents is suffered to be growing up without salutary parental control and education, or in circumstances exposing him to lead an idle and dissolute life ;
- (e) who has been found guilty of petty crime, and who, in the opinion of the judge or magistrate before whom he has been convicted, should be sent to an industrial school instead of to a gaol.
- (f) who (being a child of between ten and fourteen years of age) has been expelled from school for vicious and immoral conduct.

The Court may after investigation deal with such a child under the Act. Where a boy is beyond the control of the officers of an industrial school, he may be ordered to be confined in prison. Persons committed to an industrial school remain till the age of twenty-one under the guardianship of the school authorities.

**Municipal Houses of Refuge.**—No. 38 provides for the establishment of county houses of refuge for the reception of persons of the classes described in s. 256 of the Municipal Act. The classes mentioned in

(a) See also *infra*, No. 37.

(b) See *infra*, p. 302, and repealing Act No. 55 of 1906, *infra*, p. 313.

that section are (1) poor persons incapable of supporting themselves; (2) persons able to work but who refuse or neglect to do so and are without means of supporting themselves; (3) vagrants; (4) "all such as spend their time and property in public-houses to the neglect of any lawful calling"; and (5) idiots.

**1904 (c)** Acts passed—107, of which 69 were Local or Private.

**Legislative Assembly.**—No. 2 removes certain disqualifications for election to the Legislative Assembly. It provides, *inter alia*, that sureties for public officers or contractors are not to be ineligible for election.

**Election Law.**—No. 3 provides that no person shall be appointed returning officer, deputy returning officer, or poll clerk who has been found guilty of corrupt practices. It also imposes a penalty upon any deputy returning officer who wilfully omits either to initial the back of ballot papers or to prefix a number to the names in the list of voters. Election petitions must be presented within forty-five days after the polling.

**Security by Public Officers.**—No. 4 confirms certain Orders in Council respecting the security to be given by public officers.

**Taxation of Railways.**—No. 5 is the Supplementary Revenue Act. It imposes a heavier tax on railways. Railway companies owning, operating, or using a steam railway in the province have to pay a tax of \$30 per mile for one track, and \$10 per mile for each additional track where the line consists of two or more tracks operated or used in any county. In unorganised territory the tax is less, being \$20 per mile for one track and \$5 per mile for each additional track. Railway companies owning and operating lines not exceeding 150 miles in length from terminus to terminus are taxed on a still lower scale, viz. \$15 per mile for one track, and \$5 per mile for each additional track. Where a line is owned and worked by different companies, they are jointly and severally liable for the tax. In measuring the trackage of a railway for the purposes of the Act, switches, spurs, or sidings are not to be included.

**Statute Law Amendment.**—No. 10 (*d*) amends the law in various particulars—

**Elections.**—S. 5 provides that where the seat of any member of the Legislative Assembly is vacated for any cause, and a writ has not issued for the election of a new member within three months after the vacancy has occurred, the Clerk of the Crown in Chancery is to issue the writ forthwith.

(c) Contributed by James S. Henderson, Esq.

(d) See *supra*, p. 284.



*Estate Bills.*—S. 6 constitutes the Judges of the Supreme Courts of Ontario *ex-officio* commissioners to report under the rules and orders of the Legislative Assembly in respect of estate bills, or petitions for estate bills, submitted to the Assembly.

*Inquiries concerning Public Matters.*—S. 7 amends the Act on this subject by taking away the right previously given to witnesses examined before commissioners appointed to inquire into public matters of refusing to answer questions which might render them liable to a criminal prosecution.

*County Courts.*—S. 11 enables the judge of a county court to transfer to another county court an action which is not competent in his own, but is competent in the other court. S. 13 allows an appeal as to costs to a Divisional Court in certain cases. S. 14 enables the Divisional Court to extend the time for setting down appeals, etc.

*Limitation of Actions.*—S. 20 amends the law on this subject by providing that actions for penalties brought by any informer suing for himself alone, or for the Crown as well as himself, or by any person authorised to sue for the same, not being the person aggrieved, must be brought within one year after the cause of action arose.

*Evidence.*—S. 21 amends the Evidence Act by providing that a witness shall not be excused from answering any question which may tend to criminate him or expose him to a civil action, but if a witness is compelled to answer a question which may tend to criminate him, and which but for this section he could not have been compelled to answer, his answer is declared not to be receivable in evidence against him on the trial of any proceeding under any Act of the Legislature.

*Returns of Convictions and Fines.*—S. 24 provides that the returns of convictions and fines by justices of the peace are to be posted up in the court-house and office of the clerk of the peace, and not, as formerly, published also in the newspapers.

*Registration of Deeds.*—Ss. 30 and 31 amend the Registry Act in certain details—as to inspection of books in registry offices by a master or local master of titles, and as to investigations by inspectors.

S. 32 enables the Lieutenant-Governor in Council to direct that registrars shall cease to be engaged in any business which competes with any other business in the Registry Division under penalty of deprivation of office.

*Assignments by Insolvents.*—S. 33 enables a judge to appoint a new assignee in place of one who has died.

*Master and Servant.*—S. 38 repeals s. 14 of the Statute Law Amendment Act of 1901, (e) which imposed a penalty in the case of a workman leaving his employment before repaying advances.

(e) See *supra*, p. 278.

*Marriage.*—S. 39 amends the Marriage Act by legalising the solemnisation of marriage by elders of the church or congregation of religious people commonly called Farringdon Independent Church; and s. 40 validates marriages heretofore solemnised by such elders.

*Lien on Horses and Vehicles.*—S. 44 amends the Innkeepers Act by giving to every keeper of a livery stable or boarding stable a lien for his reasonable charges on horses boarded or vehicles left.

*Railways.*—S. 49 (*f*) adds a section to the Railway Act of Ontario providing that a railway company purchasing or taking lands under compulsory powers is not to be entitled to any mines, ores, metals, coal, slate, mineral oils, or other minerals (except such as are necessarily taken in the construction of the works) unless the same have been expressly purchased.

*Public Libraries.*—Ss. 54-6 amend the Public Libraries Act in certain details, *inter alia*, as to the amount of special rate that may be levied for the support of public libraries, and as to the use of libraries by non-residents.

*Traction Engines.*—S. 60 provides that before taking a traction engine over a bridge or culvert the person in charge shall lay down planks of sufficient width and thickness to protect the surface of the bridge from injury.

*Motor Cars.*—S. 70 (*g*) amends the law as to these vehicles by requiring the payment of a registration fee by every resident owner of a motor vehicle and every non-resident owner whose motor is driven in the province. Permits are to be issued which, with the number, are to be conspicuously exposed on the vehicle.

*Telegraphs and Telephones.*—S. 74 enacts that no telephone or telegraph company shall be deemed to have acquired or hereafter shall acquire any easement by prescription or otherwise in respect of wires or cables attached to or passing through or over private property, unless in cases where the company has obtained a grant from the owner of the property.

*Sunday Working of Street Railways.*—S. 79 prohibits under penalties the working of such railways on Sundays except for the purpose of keeping the track clear of snow or ice, or for the purpose of doing other work of necessity. This prohibition, however, is not to affect companies which before April 1, 1897, regularly ran cars on Sundays, or companies authorised by charter to run them on Sundays, or the rights (if any) of the Toronto Railway Company to do so if sanctioned by a vote of the electors.

*Judicature.*—No. 11 is the Judicature Act. It deals with appeals

(*f*) See *infra*, p. 310.

(*g*) See *supra*, p. 294, and *infra*, p. 305.



from and the jurisdiction of Divisional Courts, and as to the jurisdiction of the Court of Appeal.

**Justices of the Peace.**—No. 13 is the Justices of the Peace Act. It enables certain fees to be taken by justices in respect of the hearing of cases. A penalty is imposed for charging excessive fees, and procedure is prescribed for complaints being made in respect of any excessive charge. Any action for penalties must be commenced within six months from the time when the cause of action occurred.

**Road Companies.**—No. 14 amends the General Road Companies Act. It deals with the tolls chargeable for thrashing or traction engines and watercarts. It further enables the authorities who may have leased toll roads to retake possession where the lessee refuses after notice to keep the road in efficient repair. New bridges over twenty feet in length can only be erected on any toll road after the plans and specifications have been duly approved by the Commissioner of Works.

**Insurance.**—No. 15 amends the Insurance Act. It requires applicants for the incorporation of a friendly society, which has its head office elsewhere than in Ontario, to show to the satisfaction of the Insurance Registrar that there is real and substantial reason and necessity for the society proposed to be incorporated, and that the granting of the application would not be contrary to law or to the public interest. The Act defines guarantee insurance as including fidelity insurance, title insurance, credit insurance, and contracts of suretyship generally. A guarantee company cannot undertake title or credit insurance unless expressly authorised by the letters patent of incorporation. The Act also deals with the premiums in mutual or cash-mutual insurance companies incorporated after June 1, 1904.

No. 16 is the Weather Insurance Act. It defines weather insurance as meaning and including the insurance of any kind of agricultural property (which is also defined) against loss or injury arising from such atmospheric disturbances, discharges, or conditions as the contract of insurance shall specify. The Act further provides a set of statutory conditions to be printed on every policy and which are to be binding on the insurer unless expressly varied, any such variation to be printed on the policy in conspicuous type and in ink of a different colour.

**Loan Corporations.**—No. 17 (*h*) amends the Loan Corporations Act. It requires contracts of loan made by such corporations to be evidenced by a written instrument on which all the terms and conditions of the contract are clearly set out, including how the loan may be discharged. The contract is not to be affected by subsequent bylaws. Unregistered loan corporations are prohibited under penalties. A court of summary jurisdiction is empowered to reform a contract for a loan of money not

(*h*) See *supra*, p. 292.

exceeding \$200 where the loan has been induced by misrepresentation and the interest exceeds 10 per cent.

**Municipalities.**—No. 22 amends the Consolidated Municipalities Act, 1903 (*i*). *Inter alia*, it deals with the rearrangements of electoral divisions, elections, rates, municipal borrowing, the making of bylaws as to the situation of laundries and butchers' shops, and the closing of certain streets. It enables municipalities to grant to any person or company the right to place waste-paper boxes in streets; empowers constables to arrest without warrant pedlars who fail on demand to produce their licence. It enables grants to be made in aid of hospitals. Newspaper proprietors are not disqualified from being councillors by reason only of the fact that official advertisements of the council are inserted in such persons' newspapers.

**Assessment.**—No. 23 (*h*) is the Assessment Act, an amending and consolidating Statute of 229 sections. It declares what property is rateable and what exempt; provides for assessment returns, deals with the duties of assessors, etc.

No. 24, which is the Revision of Assessment Laws Act, makes certain further amendments on the same subject.

**Statute Labour.**—No. 25 is the Statute Labour Act, which consolidates the law on the subject. It specifies the persons exempt from the performance of Statute labour or for a commutation thereof; empowers councils to abolish or reduce the tax; declares the ratio of service and commutation in case of persons assessed, etc.

**Factories.**—No. 26 is the Factories Act. It requires young girls and women employed in factories to wear, during working hours, their hair rolled or plaited and fastened securely to their heads, or confined in close-fitting caps or nets, so as to avoid contact with the machinery. Managers and others in charge of factories are required to see that employees are fully notified of this provision. Working hours are not to be later than 6.30 p.m. unless with a special permit from the factory inspector. Factory owners are required to provide separate sets of conveniences, with separate approaches to each set, for the use of male and female workers, the recognised standard being one closet for every twenty-five employees. Owners are responsible for remedying any nuisance from defective drains; and they must arrange for a supply of pure drinking water. Employers of factories must keep the same in a sanitary condition. Factory inspectors may, in their discretion, require the provision of spittoons in factories, and may direct the use of mechanical means for preventing the inhalation of dust by employees. Elevators must be properly secured.

**Noxious Weeds.**—No. 27 is the Noxious Weeds Act. Owners or

(*i*) See *supra*, p. 293.

(*h*) See *supra*, p. 272, and *infra*, p. 311.



occupants of lands in a municipality are required to cut down and destroy at the proper time to prevent seeding all noxious weeds growing on any highway not being on a toll-road, from the boundary of the land to the centre line of the road; a similar provision is made as to land in unorganised townships.

**Game.**—No. 28 (*l*) is the Game Protection Act. It prescribes a close season for moose, reindeer, caribou, and capercaillie.

**Education.**—No. 29 amends the Education Department Act by providing for the apportionment of money for free text-books in rural districts.

No. 30 amends the Public Schools Act. It makes certain alterations in the administrative machinery. It further gives the member of a public school board who is assessed for the largest sum a second or casting vote in addition to his vote as member in case of a tie. Boards may make grants out of the school funds to superannuation funds for teachers. Where in any township it appears to the council that owing to the condition of the roads or other causes the public school in any district is during certain months inaccessible to any of the pupils, a second school may be established for such period as may be thought advisable.

No. 31 amends the High Schools Act. It empowers the collection of certain limited fees from parents to defray the cost of text-books and other school supplies.

No. 33 deals with Boards of Education. It empowers the setting up of such boards in towns, villages, and cities of less than 100,000 inhabitants—such boards consisting of an amalgamation of the education bodies—school boards, high school trustees, and boards of management of technical schools. The composition of such Boards of Education is prescribed, with the mode of election and term of office, etc.

No. 34 amends the Separate Schools Act by empowering the establishment of separate schools in rural sections.

No. 35 (*m*) amends the Toronto University Act, 1901 (*n*). Its most important provision is that which empowers the senate to make statutes providing for the cancellation of any degree conferred upon any person who has been convicted of an offence which, if committed in Canada, would be an indictable offence, or who has been guilty of any infamous or disgraceful conduct, or of conduct unbecoming a graduate of the University. The senate is further enabled to prescribe the mode of inquiring into and determining as to the guilt of such graduate.

**Property of Religious Institutions.**—No. 36 amends the Act on this

(*l*) See *supra*, p. 289, and *infra*, p. 306.

(*m*) See *infra*, p. 306, and repealing Act No. 55 of 1906, *infra*, p. 313.

(*n*) See *supra*, p. 282.

subject by providing as to conveyances of property to trustees appointed by the Boards of the Methodist Church.

**Houses of Refuge.**—No. 37 is the Houses of Refuge Act. It deals with contracts for sewerage, water, and electric light supply in connection with these institutions.

**1905 (o)** Acts passed—134, of which 96 were Local or Private.

**Provincial Loans.**—No. 2 enables the Lieutenant-Governor in Council to create a permanent provincial stock to be known as Ontario Government Stock, which is to be personal property, and chargeable and payable out of the Consolidated Revenue Fund of Ontario.

**Executive Council.**—No. 5 enables the Lieutenant-Governor to appoint a member of the Executive Council to hold office, and be designated the President of the Council.

**Succession Duty.**—No. 6 (*p*) amends the Succession Duty Act. Among the definitions for the purposes of this Act may be noted that of "child," which is to include any person adopted before the age of twelve by the deceased as his child or any infant to whom the deceased, for not less than ten years immediately prior to his death, stood in the acknowledged relationship of a parent. It also defines the debts that may, and those that may not be deducted in determining the dutiable value of the deceased's property. Estates not exceeding \$10,000 are exempt, as is also property devised or bequeathed for religious, charitable or educational purposes to be carried on by a corporation or person domiciled in the province. Property passing under a will, intestacy or otherwise, to or for the use of a father, mother, husband, wife, child, daughter-in-law or son-in-law of the deceased, is also exempt where the aggregate value does not exceed \$50,000. The Act describes the various kinds of property liable to duty; it also prescribes the scale of duty. In case an executor or administrator, in order to escape payment of duty, distributes any part of the estate without bringing the same into the province, he is to be liable personally to pay the amount of the duty which would have been payable had the assets so distributed been brought within the province.

**Mines.**—No. 9 (*q*) amends the Mines Act by providing, *inter alia*, that no land shall be sold for mining purposes in any forest reserve.

**Statute Law Amendment.**—No. 13 amends the law in various particulars.

**Legislative Assembly.**—S. 2 provides that a person holding the office

(o) Contributed by James S. Henderson, Esq.

(*p*) See *infra*, p. 308.

(*q*) Repealed by No. 11 of 1906, *infra*, p. 307.



of public school inspector is not ineligible as a member of the Legislative Assembly.

*Juries. (r)*—S. 6 provides that where a jury is to be summoned in any case in which a municipality partly or wholly within the jurisdiction of the Court is a party, and the jury would, if selected in ordinary course, be composed of ratepayers of that locality, the judge may, upon the application of any party, order the jury to be summoned from some other municipality within the Court's jurisdiction.

S. 8 enables a county council to increase the fee allowed to any sum not exceeding \$3 a day.

*Registry Act.*—S. 12 amends the Registry Act by providing that before any will or exemplification of any probate or letters of administration with will annexed under the seal of any Court is registered, an affidavit must be produced showing an account had been filed pursuant to the Succession Duty Act.

*Conditional Sale of Chattels.*—S. 14 provides that where chattels, which have been sold on special conditions, are affixed to realty they are to remain subject to such conditions as fully as they were before being so affixed, but the owner, or mortgagee, or other encumbrancer on such realty can retain the goods and chattels upon payment of the amount due thereon.

*Sleigh Runners.*—S. 29 provides that no person shall use on any public highway, except within the limits of a city, any sleigh or any other vehicle upon runners drawn by horses or other animals (except cutters) manufactured after December 1, 1906, unless the same is so constructed that the distance between the outer edges of such runners at the bottom is not less than four feet.

*Factory Inspectors.*—S. 30 enacts that a factory inspector may, if called as a witness, object when so directed by the Attorney-General, or by a member of the Executive Council, to give evidence as to any factory inspected by him in the course of his official duty.

*Surrogate Courts.*—No. 14 empowers the Surrogate Court Judge on passing the accounts of an executor, etc., to make full inquiry as to the whole property of the deceased, and the administration and disbursement thereof, in as full a manner as can be done in the Master's Office under an administration order.

*Pharmacy.*—No. 16 (s) amends the Pharmacy Act. It makes certain alterations in the Pharmaceutical Council, as to the times for holding examinations, etc. No drugs or medicines except patent or proprietary medicines and except certain named ones may be sold, except by persons registered under the principal Act. No sign, title, or advertisement,

(r) See *supra*, p. 285.

(s) See *infra*, p. 309.

may be used by an unregistered person which is calculated to lead people to infer that the person using it is registered.

**Loan Corporations.**—No. 19 amends the Act on this subject by providing that the Attorney-General of the province may on a proper application to him appoint a competent person to make a special examination and audit of the corporation's books, accounts, and securities, and to inquire into the conduct of the business of the corporation generally. The examiner so appointed may summon witnesses and take evidence upon oath. The examiner is to report the result of his examination to the Attorney-General in writing.

**Burial Grounds.**—No. 20 empowers trustees of burial grounds to make regulations for the laying out, care, and maintenance of the grounds, etc.

**Municipalities.**—No. 22 amends the Consolidated Municipal Act 1903, *(t)* as to adding territory to cities or towns, as to appointment of election officers, elections, etc. Bylaws may be passed by the Council of any city having a population of 100,000 or over, authorising the city architect to permit deviation from building bylaws in special cases. Bylaws may also be passed for regulating the delivery or exposure for sale of meat in streets or markets; requiring conveniences to be erected by builders in connection with buildings or public works; for collecting ashes, refuse, and garbage at expense of owners, lessees, or occupants of real property. Certain alterations are also made as to the constitution and duties of boards of police trustees.

**Public Libraries.**—No. 26 provides that no person who is not a British subject shall be appointed a member of the Board of Management of a public library.

**Highways.**—No. 27, *(u)* *inter alia*, provides as to the application of money paid in commutation of Statute labour; roads receiving aid under the Act are to be deemed county roads, and are to be maintained by the corporation of the county in which the roads are situated.

**Motor Vehicles.**—No. 28 *(x)* makes more stringent the laws as to these. It requires motor vehicles to have securely fixed to the back of the body of the car the number of its permit, the number to be in plain figures not less than five inches in height. Lighted lamps are to be carried in front after dusk, and on the glass of such lamps the number of the permit is to be displayed. Motor vehicles are not to approach within one hundred yards of vehicles drawn by horses, or horses upon which any one is riding, or pass the same, at a greater speed than seven miles an hour. The owner of a motor vehicle for which a permit is issued is made responsible for any violation of the Act or regulations.

*(t)* See *supra*, p. 293.

*(u)* See *supra*, p. 294.

*(x)* See *supra*, p. 299, and repealing Act No. 46 of 1906, *infra*, p. 312.



When in any public place and not in motion, motor vehicles are to be securely locked or made fast to prevent them being set in motion. Licences may be revoked for breaches of the Act. In case of accident to any person through the frightening of a horse or other animal by a motor vehicle the onus of showing that there was no negligence on the part of the owner or driver of the motor vehicle is cast upon such owner or driver.

**Liquor Licences.**—No. 30 by repealing certain words in a former Act makes it an offence to sell liquor to a minor, although it is supplied upon the written order of the minor's parent, guardian, or master.

No. 31 (*y*) provides for the granting of warehouse licences to brewers or distillers. This authorises the storage of unbroken packages of beers or spirits manufactured by the brewer or distiller. Sales may take place from such warehouses.

**Public Health.**—No. 32 prohibits the keeping or storing of rags, bones, or other refuse in any building used as a dwelling, or upon any premises within a municipality unless in a building approved by the medical health officer.

**Game.**—No. 33 (*z*) prohibits dealings in game or in the hides of certain deer during close time.

**Toronto University.**—No. 35 incorporates the University Residence Trustees and prescribes their powers. Real and personal property of the Board is exempted from provincial, municipal, or other taxation.

No. 37 (*a*) is the University of Toronto Act. It sets out in the preamble that it is desirable that the University Trustees should be enabled to assist in the reorganisation of the Toronto general hospital so as to constitute it a provincial hospital in which clinical facilities may be provided for the medical faculty; and that it is further essential to provide new buildings for the accommodation of the department of physics, buildings for the department of forestry, etc. It then enables a grant not exceeding \$30,000 per annum for a period not exceeding thirty years to be made to the trustees for these purposes. Sums are allocated to the various schemes.

**Institutions for Deaf, Dumb, and Blind.**—No. 38 enables the Minister of Education to make periodical inquiry into the character and efficiency of these institutions.

**1906** (*b*) Acts passed—150, of which 88 were Local or Private.

**Loans.**—No. 4 authorises a provincial loan not exceeding \$3,000,000 for public purposes to be borrowed for any term not exceeding forty

(*y*) See *supra*, p. 273.

(*z*) See *supra*, p. 302.

(*a*) See *supra*, p. 302, and repealing Act No. 55 of 1906, *infra*, p. 313.

(*b*) Contributed by James S. Henderson, Esq.

years, and at a rate not exceeding 4 per cent. Bonds and inscribed stock issued under the authority of the Act are to be free from all provincial taxes, succession duty, charges and impositions.

**Sums in Hands of Accountant of Court.**—No. 5 forfeits to his Majesty certain sums which by the direction of commissioners holding an inquiry had been lodged with the accountant of court, and provides that they are to be applied to such charitable uses as the Lieutenant-Governor shall determine.

**Manhood Suffrage.**—No. 6 (*e*) amends the form of oath given in the schedule to the Manhood Suffrage Registration Act, by requiring the applicant for registration to declare that he is not a citizen or a subject of any foreign country.

**Supplementary Revenue.**—No. 9 amends the Revenue Act, 1899, (*d*) by imposing a uniform tax of \$100 for the head office of every bank in the province, and \$25 for each additional office, branch, or agency, instead of, as formerly, making the tax a percentage on the paid-up capital stock of the bank. The Act likewise makes certain alterations in the tax on railways and street railways. Half the annual receipts from the tax on railways (after deducting a sum of \$30,000) are to be credited to the various municipalities; but against that the municipalities are to be debited with the cost of maintenance of the inmates of asylums coming from such municipalities.

**Mines.**—No. 11 (*e*) is the Mines Act, a Statute of 222 sections, codifying the law on the subject. It provides, *inter alia*, for the appointment of an official to be known as "Mining Commissioner," who must be a barrister of at least ten years' standing at the Ontario Bar, and is to be deemed an officer of the High Court. The Mining Commissioner is invested with extensive judicial powers in regard to mines and mining rights; and an appeal lies from his decision to a Divisional Court. Provision is made for a bureau of mines, and the appointment of a provincial geologist, assayer, inspector, and mining recorders. The Act further provides that no person, partnership, or company shall carry on in Ontario the business of mining or be entitled to explore for mines without first taking out a licence. Provision is also made with regard to Crown lands, mining claims, surface rights. S. 188 gives mine-workers a lien for their wages not exceeding the wages for thirty days. Ss. 191 to 221 relate to the working of mines. The employment of boys under fifteen below ground in mines is prohibited; and except in the case of mica trimming works, no girl or woman may be employed at mining work in or about a mine. No boy or young male person of fifteen or under seventeen may be employed

(*c*) See *supra*, 234.

(*d*) See *supra*, p. 271.

(*e*) See *supra*, pp. 271, 303.



below ground in a mine on Sunday or for more than forty-eight hours in any one week, or for more than eight hours in any one day. A register of lads employed is to be kept. Excepting in towns and incorporated villages no liquor licence is to be issued for any place within six miles of any mine or mining camp where six or more workmen are employed. The payment of miners' wages in public-houses is prohibited. Abandoned or unworked mines are to be securely fenced. Mines are to be properly ventilated, and a sufficient number of portable water-tight privies may be ordered to be provided for underground employees. Provision is also made with regard to explosives, the protection of workmen in the mines and shafts. Accidents have to be notified.

**Hydro-Electric Power Commission.**—No. 15 provides for the appointment of a hydro-electric power commission which may be authorised to acquire lands, works, plant, and property of transmission companies, and may contract with municipalities and railway and other companies for the supply of power for lighting, heating, and other purposes.

**Agriculture and Horticulture.**—No. 16 is the Agricultural Societies Act. It states the object of such societies to be the improvement of agriculture, horticulture, arboriculture, domestic industry, etc. This improvement it endeavours to secure by awarding premiums for live-stock, agricultural implements, etc.; by organising ploughing matches and shows, etc. The Act also deals in detail with the organisation and regulation of such societies.

**Statute Law Amendment.**—No. 19 is the Statute Law Amendment Act.

**Succession Duty.**—S. 11 (*f*) amends the Succession Duty Act in certain details. It, *inter alia*, empowers the Surrogate Registrar in case of dispute to settle the debts, encumbrances, and other allowances and exemptions, and to fix the cash value of the estate.

**Arbitration.**—S. 13 amends the Arbitration Act by substituting new definitions of "submission" and "arbitrator." "Submission" is defined thus: " . . . unless a contrary intention appears, 'submission' means a written agreement to submit present or future differences to arbitration or valuation, whether an arbitrator or a valuator is named therein or not, and shall be deemed to include a written agreement to submit to arbitration or valuation or assessment the ascertainment of any sum or sums of money, or settlement of any terms or differences in any contract, in the fixing or determining of which two or more persons are or may be interested, whether the subject of difference or not, and whether an arbitrator, valuator, or assessor is named therein or not." The term "arbitrator" is to "be taken and read to include and mean 'valuator': and 'arbitration' to include and mean 'valuation.'"

**Police Magistrates.**—S. 14 enables the Lieutenant-Governor in

(*f*) See *supra*, p. 303.

Council to appoint two police magistrates for any city containing not less than 200,000 inhabitants. The salaries are not to exceed \$5000 in the case of the senior magistrate, and \$3000 in the case of the junior magistrate. During his continuance in office no police magistrate appointed under this section is to act as director of a company, or directly or indirectly practise in the profession of the law, under the penalty of forfeiture of office.

*Conditional Sales of Chattels.*—S. 23 provides that receipt notes, hire receipts, and orders for chattels, given by bailees of chattels, other than manufactured goods, where the condition of the bailment is such that the possession passes without ownership being acquired by the bailee until payment, are only to be valid against subsequent purchasers without notice if, within ten days from the execution of the receipt note, etc., the note is filed in the county court clerk's office.

*Billiard-rooms.*—S. 31 amends the "Act to prevent minors from frequenting billiard-rooms and other places" by raising the age of minors for the purposes of the Act from sixteen to eighteen. Keepers of billiard-rooms are consequently prohibited under penalties from admitting minors under eighteen.

*Destruction of Wolves.*—S. 33 authorises the payment of a bounty to a person killing a wolf, although the affidavit evidencing the fact of the destruction of the wolf has not been sworn before a person appointed under the Act.

*County Courts.*—No. 20 enables agreements to be made for the trial of High Court actions in a county court.

*Libel and Slander.*—No. 22 amends the Act dealing with this subject. It amends the definition of "newspaper" by making it include a publication issued at intervals of thirty-one days, instead of, as in the principal Act, confining the term to publications issued at intervals not exceeding twenty-six days. S. 2 protects fair and accurate reports of proceedings in Parliament or public meetings, or (except where the public or reporters are not admitted) meetings of any board or local authority constituted under any Statute.

*Devolution of Estates.*—No. 23 amends the law on this subject. It declares who may be made defendants in foreclosure actions where there is no personal representative of a deceased mortgagor. It also defines executors' power of sale of real property.

*Pharmacy.*—No. 25 (g) prohibits incorporated companies selling by retail poisons, drugs, or medicines unless a majority of the directors are duly registered as chemists and unless one of such directors personally manages and conducts the shop, and has his name and certificate posted up in a conspicuous position in the shop.

(g) See *supra*, p. 304.



**Engineers.**—No. 26 amends the Stationary Engineers Act. It provides for the appointment of a board for the examination of persons for certificates under the Act; and it enacts that no uncertificated person may, for more than thirty days at any one time, operate or have the charge of any steam plant operating an engine of 50-horse power or over. Penalties are provided for violations of this enactment.

**Companies.**—No. 27 is the Prospectuses issued by Companies Act. After defining the term "prospectus," it enacts that companies may, in offering shares to the public, lawfully pay a commission for getting shares subscribed, provided the payment thereof and the rate of commission are authorised by the letters patent and disclosed in the prospectus. Brokerage may be paid. Every company which increases the number of its shareholders to a number greater by ten than the number of applicants for incorporation, or which has its debentures or other securities held by more than ten persons, must file a prospectus. All sales, subscriptions, or other dispositions of shares, etc., are to be deemed as against the company or the signatories of the prospectus to be induced by such prospectus, and any term of the prospectus to the contrary is to be void. No subscription for stock, etc., induced or obtained by verbal representations is to be binding upon the subscriber unless prior to his so subscribing he has received a copy of the prospectus. Every prospectus must be dated, signed, and filed. As to the contents, etc., of a prospectus, the Act practically reproduces s. 10 of the English Companies Act, 1900. (*h*) For breaches of the Act penalties are prescribed.

**Railways.**—No. 30 (*i*) is the Ontario Railway Act. It consists of two hundred and sixty sections, and codifies the law as to railway companies, their organisation, power to take lands, tolls, interchange of traffic, etc. S. 105 imposes upon every company the obligation of causing thistles and noxious weeds growing on the right-of-way and over the company's land adjoining the line to be cut down or rooted out each year before the plants have sufficiently matured to seed. The company is further (s. 106) to keep the land free from dead or dry grass weeds and other unnecessary combustible material. By the same section the company is also made liable for damage occasioned by fires started by locomotives, whether the company has been negligent or not. If, however, it is shown that modern and efficient appliances have been used, and the company has not been guilty of negligence, the total amount of compensation recoverable in respect of a fire or fires started by the same locomotive on the same occasion is not to exceed \$5000, to be apportioned among the claimants as the Court may determine.

By s. 114 trains are to start and run at regular hours, and they

(*h*) 65 & 66 Vict. c. 48.

(*i*) See *supra*, p. 279.

must furnish sufficient accommodation for all such passengers and goods as within a reasonable time previous to the advertised time of starting are offered for transportation. Fares or tolls are due by passengers on entering the train; on refusal to pay, the passenger may be expelled (s. 116). Persons injured while on the platform of a train, or on any baggage or freight car, in violation of the regulations, are barred from any claim, if there was room inside the passenger cars (s. 117). Except by permission of the Ontario Railway and Municipal Board, no passenger train upon a steam railway is to have any freight, merchandise, or lumber car in the rear of any passenger car in which any passenger is carried (s. 118). Adequate station accommodation must be provided (s. 128). Provision is also made for the inspection of railways, rolling stock, etc. (s. 162). Motormen have to be examined before being appointed (s. 221); examination for colour-blindness is also provided for (s. 222). Actions for damages against railway companies must be commenced within one year from the time the damage was sustained, or if there is continuation of damage within one year after the committing of the damage ceases (s. 223). Mechanics, etc., are given a lien for wages (s. 226). No company operating a line of railway of twenty miles in length or over is to permit or require a conductor, engineer, motorman, fireman, trainman, despatcher, or signaller who has worked in any capacity for sixteen consecutive hours to go again on duty to perform any kind of work unless he has had at least six hours' rest (s. 227). Returns have to be made as to accidents (ss. 228 *et seq.*). Selling liquor to railway employees on duty is prohibited under a penalty (s. 244).

**Railway and Municipal Board.**—No. 31 constitutes the board referred to in the previous Act as the Ontario Railway and Municipal Board, which is invested, in regard to various matters affecting railways, with all the powers of the High Court. The board may make regulations for the purpose of ensuring safety on railways. It may also arbitrate in disputes between companies and their employees and mediate in case of strikes.

**Burial Grounds.**—No. 33 makes provision for the appointment of trustees of burial grounds when no provision has been made as to this in the deed or other instrument setting apart the land for this object.

**Municipalities.**—No. 40 amends the Municipal Waterworks Act. It reconstitutes the Board of Water Commissioners, and enables corporations to fix different rates for the supply of water.

No. 41 provides for the establishment of local telephone systems.

**Assessments.**—No. 36 (*k*) is the Assessment Amendment Act. It

(*k*) See *supra*, p. 301.



increases amounts of income received from personal earnings which are exempt from payment of income tax.

**Exemption of Woodlands from Taxation.**—No. 42 enables the council of any township to make a bylaw exempting woodlands from municipal taxation, provided that such bylaw does not exempt more than one acre in ten, and not more than twenty-five acres held under a single ownership.

**Motor Vehicles.**—No. 46 (*l*) repeals former enactments and makes further provision as to this subject. Motor vehicles have to be registered; each must be equipped with an alarm bell, gong, or horn, and also be provided with a lamp. In a city, town, or incorporated village no motor vehicle is to exceed ten miles an hour; outside, the maximum speed is fifteen miles an hour. Councils may, however, by bylaw set apart roads on which for testing purposes motors may be driven at a higher speed. These vehicles are not to be driven recklessly, nor on a public road for a wager. No intoxicated person is to drive. Every one in control of a motor is to use all reasonable precaution not to frighten horses. In case of an accident, the person in charge of the motor whose presence has occasioned the accident must return to the scene of the accident, and upon request give his name and address, and that of the owner of the motor. When not in use motors must be locked while standing in any public place. In case of accident the onus of proof is cast upon the owner or driver. For certain violations of this Act the person committing same may be arrested by peace officers without warrant.

**Liquor Licences.**—No. 47 amends the Liquor Licence Laws. It prohibits the issue of licences to members of municipal councils or their wives, and licensees are disqualified for election to councils. Bar-tenders must be licensed. A bar-tender's licence is not to be issued to a minor or to a woman. Subject to certain regulations tavern or shop licences may be granted to partnerships and incorporated companies. The duties payable for tavern and shop licences are prescribed; they vary according to the population of the place where the licensed premises are. Licence duties are payable into a Licence Fund from which are defrayed the expenses of the Act, and the balance is divided equally between the province and the city, town, or village where the licensed premises are situate. Sales of intoxicating liquors are prohibited between 7 p.m. on Saturday and 6 a.m. on Monday except upon a requisition for medical purposes signed by a medical practitioner or justice of the peace. Upon three convictions within two years licences are to be cancelled. Further provision is made as to the manner of submitting to the electorate the question of prohibiting the

(*l*) See *supra*, p. 294.

sale of intoxicating liquors except in houses of public entertainment. Penalties are prescribed for punishing frauds in the sale of liquor. Licensees are prohibited from entering into tied covenants. Licensees may be notified not to furnish liquor to inebriates.

**Cheese and Butter.**—No. 48 requires dairies and cheese factories to be kept clean and sanitary. Dairy inspectors may be appointed.

**Preservation of Forests from Fire.**—No. 49 enables the Minister of Lands to appoint fire rangers for the purpose of preventing fires during the construction of any railway passing through a public forest.

**Bees.**—No. 51 authorises the appointment of one or more inspectors of apiaries for ascertaining the existence of the disease known as "foul brood" among bees, and to take the necessary steps to eradicate the same.

**Education.**—No. 53 (*m*) amends the Public Schools Act as to the grouping of schools for continuation classes, the expropriating of land for school purposes, the appointment of county inspectors, etc.

No. 55 (*n*) consolidates the law respecting the Toronto University. It authorises the name to be changed to the University of Ontario, and deals with the whole organisation of the institution.

No. 57 relates to the admission to institutions for the education of the deaf and dumb and blind.

**County Houses of Refuge.**—No. 58 amends the Consolidated Municipal Act, 1903, (*o*) by enabling orders to be made for the expense of the maintenance of any inmate to be paid out of the property possessed by him or her. These institutions are to be annually inspected by the inspector of prisons and public charities.

**Custody of the Insane.**—No. 61 empowers the issue of a warrant for the apprehension of any person believed to be insane and dangerous to be at large, and the committal of such person to some "safe and comfortable place" until the question of his sanity is determined. In no case is he to be committed to a prison unless he be violent and dangerous, and there is no other suitable place for his confinement. Provision is then made for the examination into the mental condition of such person, his removal to an asylum if found insane, and his discharge if found to be sane.

**1907** (*p*) Acts passed—126; of which 71 were Local or Private.

**Interpretation of Statutes.**—No. 2 is the Interpretation Act. S. 5 requires the clerk of the Legislative Assembly to endorse on every Act, immediately after the title, the day, month, and year when it was

(*m*) See *supra*, p. 282. (*n*) See *supra*, pp. 296, 302, 306. (*o*) See *supra*, p. 293.

(*p*) Contributed by James S. Henderson, Esq.



assented to or reserved; such endorsement is to be taken to be part of the Act; and the date of the assent is to be the date of the commencement of the Act if no later commencement is therein mentioned. A number of words and phrases are defined and are to receive those meanings in all Statutes unless such a construction would be inconsistent with the context; *e.g.* the word "shall" is to be construed as imperative, and the word "may" as permissive. Further, the law is to be considered as always speaking, and whenever any matter or thing is expressed in the present tense, the same is to be applied to the circumstances as they arise, so that effect may be given to each Act according to its spirit, true intent, and meaning.

**Printing of Statutes.**—No. 3 deals with the printing and distribution of Statutes. It requires (*inter alia*) the clerk of the Legislative Assembly to furnish the King's printer with a certified copy of every Act as soon as the same has been assented to.

**Election Law.**—No. 4 consolidates and amends the law respecting voters' lists. It deals with the making up and revision of those lists.

No. 5 amends and consolidates the Manhood Suffrage Registration Act. Every male British subject of the full age of twenty-one who is not disqualified is entitled to be entered on the list of manhood suffrage voters, provided he has resided in Canada for the twelve months preceding the day on which the first sittings for the preparation of the lists is held, and provided also that he has for a specified time resided in the particular district. Boards of registrars are constituted for preparing lists of voters. Every registrar is, during the days on which he holds sittings, constituted a conservator of the peace and invested with the same powers as justices. Offences against the Act include the provision of free conveyance, or conveyance at reduced fares by rail or vessel, of those intending to apply or applying for registration as voters.

No. 6 makes special provision for the case of clergymen or school teachers who may have ceased to reside in the electoral district in respect of which they are on the register.

**Salaries of Executive Council.**—No. 7 is the Salaries Act. It provides that the Attorney-General, the Secretary and Registrar of the Province, the Treasurer, the Minister of Lands, Forests, and Mines, the Minister of Agriculture, the Minister of Public Works, the Minister of Education, and the President of the Executive Council, shall each receive an annual salary of \$6000. The Minister of the Executive Council, holding the recognised position of First Minister, is to receive, in addition, \$3000 per annum.

**Revenues of the Crown.**—No. 9 is the Supplementary Revenue Act. It imposes in the case of mines which have an annual profit exceeding

\$10,000 a tax of 3 per cent. on the excess of annual profits above \$10,000. There are elaborate provisions as to the method of ascertaining profits and as to deductions. All natural gas in the province is made subject to a tax of two cents for every 1000 feet flowing, drawn, or pumped from or produced by the well, but natural gas used by the owner or occupier of the land on which the well is situated is exempted from the tax. Where any tax imposed by the Act is not paid at the time provided, 10 per cent. is forthwith added to the amount, and 10 per cent. is to be added at the expiration of each year thereafter that the tax remains unpaid. For encouraging the smelting in Canada of iron ores mined in Ontario, and for encouraging the use in Canada of natural gas produced in Ontario, bonuses in the shape of exemption, total or partial, from the taxes on iron ore and natural gas may be given.

No. 10 is the Succession Duty Act. It specifies the property liable to, and the scales of, duty, and grants certain exemptions.

**Metal Refining Bounty.**—No. 14 is the Metal Refining Bounty Act. It authorises the payment of a bounty upon certain metals or compounds when refined in the province from ores raised and mined in the province.

**Power Commission.**—No. 19 provides for the appointment of a commission, to be known as "The Hydro-Electric Power Commission of Ontario," which may report as to the acquisition of lands, etc., to be used for the purposes of the Act, and may be authorised to acquire such lands, etc., and contract for the supply of power.

**Statute Law Amendment.**—No. 23 amends the Law in various particulars:—

**Marriage.**—S. 8 amends the Marriage Act by adding the following provisions: Where a form of marriage has been gone through between two persons, either of whom is under the age of eighteen, without consent, the High Court is given jurisdiction, in an action brought by the party who at the time of the ceremony was under eighteen, to declare and adjudge that a valid marriage was not effected; provided, however, that such persons have not after the ceremony cohabited, and that the action is brought by the plaintiff before he or she has attained the age of nineteen. The Court is not bound to grant relief where carnal intercourse has taken place between the parties before the ceremony.

**Cattle-maiming or poisoning.**—S. 11 empowers coroners to investigate cases of maiming, or suspected maiming, or suspected poisoning of horses, cattle, and other domestic animals.

**County Court Judges.**—By s. 32 county court judges may be authorised to transact business out of their jurisdictions.



*Actions in respect of fires.*—S. 41 provides that no action is to lie against a person from whose premises fire is accidentally communicated.

**Fines and Penalties.**—No. 26 makes provision for the recovery by action or by indictment, and the application of pecuniary penalties. In the case of fines imposed by any Act of the Province of Ontario, the Court or judge having cognisance of the proceedings for the recovery of such penalties may remit the same in whole or in part; but this power is not given to police magistrates or justices of the peace; nor does it authorise the remitting of costs incurred up to the time when the penalty or forfeiture is remitted.

**Mortgages.**—No. 27 (*q*) makes provision for paying off mortgages when provision is made for a lower rate of interest if same is punctually paid. When the interest has been punctually paid up to the time the principal money is payable, the person entitled to redeem may do so upon payment of principal and interest thereon at the lower rate on giving three months' notice of his intention to make such payment, or on paying three months' interest at such lower rate in lieu of notice. If the mortgagor fails to pay according to such notice, he is thereafter only entitled to make such payment on paying the principal and interest at the lower rate to the date of payment, together with three months' interest in advance.

**Investments by Trustees.**—No. 28 authorises investments in terminable debentures or debenture stock of certain companies.

**Land Titles.**—No. 30 authorises the employment of counsel for the examination of titles. Easements may be entered on the register where the dominant land is registered.

**Stationary Engineers.**—No. 32 makes provision for the appointment of a board of examiners to conduct examinations of candidates for certificates of qualification as stationary engineers. Holders of certificates must register themselves annually; unqualified persons are not to operate or have charge of any steam plant in Ontario except in cases of emergency. The expression "steam plant" for the purposes of the Act does not include steam plant having a capacity of less than fifty horsepower, nor does it extend to steam-heating plants operating at a pressure of twenty pounds or under, nor to the operation of a locomotive engine or steamship engines.

**Pawnbrokers.**—No. 33 requires pawnbrokers to give security to the municipality in the sum of \$1000. A licence or renewal may be refused without cause assigned. Pawnbrokers are required to make a daily report to the police giving a description of all articles received in pawn, the number of the ticket issued in respect of each article, and the amount advanced. Failure to comply with this enactment is

(*q*) See *supra*, p. 292.

punishable by a fine of \$40. Pawnbrokers' premises may be inspected by the police. No gold or silver pawned is to be melted on the premises of any pawnbroker unless specially authorised by the municipal council.

**Companies.**—No. 34 is the Companies Act. It consists of 212 sections and consolidates the law on the subject. It provides for the incorporation, re-incorporation, and amalgamation of companies. It defines the powers of such companies. Letters-patent incorporating a company may be forfeited for non-user, and may at any time be revoked on sufficient cause shown, or it may be surrendered on certain conditions being complied with. The corporate name of every company must be free from objection. Provision is also made for meetings of the company; as to the balance-sheet; as to shares and calls; as to the powers of directors; as to the prospectus and directors' liability, etc. As to many of these provisions, they are framed on the same lines as recent English legislation in reference to companies. The Act also deals with mining and trust companies, and companies operating municipal franchises and public utilities.

No. 37 provides for the forfeiture of rights and privileges of a corporation operating a public utility which is declared by the Parliament of Canada to be a work for the general advantage of Canada, or which passes out of the jurisdiction of the province. "Public utility" is defined as including any water-works, electric heat, light and power works, telegraph and telephone lines, railways and works for the transmission of gas, oil, water, or electrical power or energy, or any similar works supplying the general public with necessities or conveniences.

**Gas and Water Companies.**—No. 35 enables municipalities to subscribe for and take stock in, or lend money to, these companies.

**Insurance.**—No 36 amends the Ontario Insurance Act. It (*inter alia*) provides for obtaining a declaration of presumption of death where the assured has not been heard of for a period of seven years.

**Railway and Municipal Board.**—No. 38 makes further provision as to the duties of this Board. The Board may inquire and report as to rates charged by public utilities.

**Municipalities.**—No. 40 amends the Municipal Act in various particulars. It deals with laundry licences, smoke prevention, the adjustment of differences between authorities as to the maintenance and repair of bridges, roads, etc.

No. 42 enables municipalities to make bylaws as to drainage repairs.

No. 44 amends the Municipal Light and Heat Act by giving power to expropriate lands for the purpose of works.

**Assessment.**—No. 41 amends the Assessment Act. It deals with



the assessment of pipes, poles, wires, etc., on roadways forming the boundary line between two municipalities.

**Liquor Laws.**—No. 46 deals with licences, and prohibits, under a penalty of not less than \$10 and not greater than \$50, the supplying of liquor to minors.

**Natural Gas and Oil Wells.**—No. 47 is an Act to prevent the wasting of natural gas and to provide for the plugging of all abandoned wells. Inspectors are to be appointed to see that the provisions of the Act are carried out.

**Game and Fisheries.**—No. 49 contains elaborate provisions dealing with these subjects, practically consolidating the Law. It enables the Lieutenant-Governor in Council to make regulations for the protection of birds, forbidding the possession of guns in any part of the province in which it may be desirable to take special means to prevent violations of the Act. The Act also deals with open seasons for deer, moose, grouse, quails, wild turkeys, black and grey squirrels, etc. Hunting on Sunday is forbidden. No eggs of game birds are to be taken, destroyed, or had in possession by any person at any time. Trespass in pursuit of game is made an offence, and no person is to take any game by the use of poison. Under Part III. of the Act, which deals with fish, regulations may be made forbidding fishing except under licence, for preventing the destruction of fish, and improper, wasteful, and excessive taking of fish, for regulating the number, size, and weight of any species of fish that may be caught, and for regulating the taking of frogs and setting apart any suitable waters for the cultivation and propagation of frogs. Part IV. deals with the possession, sale, and transportation of certain kinds of birds and fish. Part V. deals with the issue of licences.

**Education.**—No. 50 amends the Department of Education Act. It makes further provision for the affiliation of schools with the universities; and the apportionment of educational grants.

No. 51 amends the Public Schools Act. It gives to corporations, societies, agents, or persons having the custody of immigrant children, the right to send such children to the schools where they reside. It also provides for the levying of rates for continuation classes; authorises school trustees to provide and pay for dental and medical inspection of pupils, to permit school premises to be used for any educational or other lawful purpose, provided the proper conduct of the school is not interfered with, and to establish, conduct, and maintain, free evening classes for the citizens at large. Urban school boards are empowered to expend money in promoting and encouraging gymnastics and other athletic exercises.

No. 52 enacts that, subject to certain exceptions, all members of

religious and educational committees thereafter appointed as teachers in Roman Catholic separate schools shall possess the same qualifications as may be required from time to time in the case of public school teachers. The Act further provides for the granting of certificates to teachers; but no such certificate can be granted under the Act to a person who is not a British subject.

No. 53 is the University Act. It authorises the equipment of observation schools in connection with the Faculty of Education.

**Municipal Sanatoria.**—No. 55 authorises the acquisition of lands for the purposes of sanatoria.

## 7. PRINCE EDWARD ISLAND. (a)

1898

Acts passed—24.

**Evidence** (No. 3).—This enactment amends the Act respecting witnesses and evidences by making it necessary, when commercial travellers sue for the recovery of purchase-money, to prove that at the time the sale was entered into they were in possession of a valid licence according to the provisions of the Act.

**Bankruptcy** (No. 4). (b)—By this enactment a confession of judgment, cognovit, or warrant of attorney made by an insolvent debtor is void when given with intent to delay or defeat a creditor's claims; and an assignment of goods made with the same intent is also void, except when made to an official assignee or to an innocent purchaser for present value. In the case of an assignment to an official assignee for the benefit of creditors, such assignee must pay the wages, not exceeding three months, of persons in the employment of the person making the assignment, in preference to the claims of other creditors. Provisions are also made for creditors' meetings and the methods by which their claims are to be proved.

**Queen's Counsel** (No. 5).—Only four Queen's Counsel may be made in any four years, except in the case of any person appointed Attorney-General or Solicitor-General of Canada, or Attorney-General of this province, or in the case of a Queen's Counsel appointed by the Governor-General in Council, for the Federal Courts, and who has not been appointed by the Lieutenant-Governor in Council.

(a) Contributed by H. Stuart Moore, Esq.

(b) See *infra*, p. 322.



The order of precedence in the provincial Courts is as follows :—

1. Attorney-General of Canada.
2. Attorney-General of the province.
3. Members of the Bar of the province who have filled the office of Attorney-General of Canada or Attorney-General of the province, according to seniority of appointment.

**Game (c)** (No. 9).—This enactment forbids the killing or having in possession any partridge within the province for the period of two years.

## 1899

Acts passed—34.

**Fisheries.**—No. 4 empowers the Lieutenant-Governor in Council to grant from the Crown the bed of rivers, and lakes and foreshores, within the province. He may also grant fishery leases and licences over Crown property, or may set apart any waters for the artificial propagation of fish.

**Education.**—No. 7 amends the Public Schools Act, 1877, and, *inter alia*, empowers any truant officer for the city of Charlottetown to arrest any child between the ages of eight and fourteen found loitering in the streets during school hours.

**Cattle.**—No. 9 requires that all cattle on their importation be accompanied by a certificate showing that they are free from tuberculosis, and on failure of the production of such certificate they must be submitted to one week's quarantine. If found to be infected, they must be destroyed or otherwise disposed of.

**Dower.**—No. 13 enables a wife to have dower in her husband's equitable estates, and in lands in respect of which her husband at the time of his death was entitled to a right of entry or action. The husband can, with the consent of a judge of the Supreme Court, bar the right to dower when the wife is a lunatic, provided he secures a sum equal to the value of the dower for the wife's benefit.

**Official Reporters.**—No. 15 provides for the attendance of official shorthand writers at the Courts of Law, and enacts that in certain cases their reports shall be admissible in evidence.

**Taxation.**—No. 20 (*d*) imposes a tax of twenty dollars per annum on every commercial traveller not permanently residing in the province who travels in goods other than liquor. Commercial travellers who sell or canvass for orders for liquor require an annual licence costing two hundred dollars. Every liquor-seller has to be registered, and can only be licensed for one place.

(c) See *infra*, p. 324.

(d) See *infra*, p. 321.

## 1900

## Acts passed—19.

**Court of Chancery.**—No. 2 reduces the scale of fees for masters, registrar, counsel, and solicitors, and enables trustees to retire from their trusts by transferring their securities to the registrar of the Court. The Court of Chancery is also given power to award damages in addition to, or in substitution of, injunctions in action for breach of contract and the like, and such damages may be assessed by the Court without the intervention of a jury.

**Intoxicating Liquors** (No. 3). (*e*)—The Prohibition Act makes it a penal offence for any person to sell or barter, or in consideration of the purchase of any other property, give, to any other person any intoxicating liquor. Vendors appointed under the Act may supply liquor in quantities not less than five gallons to legally qualified physicians, chemists, or druggists, to clergymen for sacramental purposes, or for use in some art, trade, or manufacture. When the sale is for medical purposes, it can only be made on a certificate of a medical man affirming that such liquor has been prescribed as a medicine and not as a beverage. The first and second offences entail a penalty of one hundred and two hundred dollars respectively, and the third and every subsequent offence imprisonment for a term of six months.

**Taxation.** (*f*)—No. 6 imposes an annual tax on the following companies: fire insurance whose principal office is not within the province, \$150; local fire insurance, \$75; life insurance whose principal office is not within the province, \$250; accident and guarantee, \$50; trust, loan, or building, \$225; telegraph, \$375; banking (one office), \$75; other banks, \$200; electric and gas, \$100; common carriers, \$100; express, \$150; brewers and distillers, \$500; other companies whose principal office is not within the province, \$100.

**Public Offices** (No. 7).—The time for the transaction of business in all Government offices is to be from 9 a.m. to 4 p.m., except that from May 15th to October 31st they shall close at 1 p.m. on Saturdays. Offices are not to open on public holidays or any day appointed as a holiday by the Governor-General.

## 1901

## Acts passed—37.

**Highways.**—No. 1 (*g*) repeals the previous Acts relating to public roads, and places the control of all roads, bridges, and highways in the Commissioner of Public Works. Overseers are appointed annually to look to the repair of the roads in their districts. In winter, inhabitants

(*e*) See *infra*, pp. 322, 323.

(*f*) See *supra*, p. 320, and *infra*, p. 322.

(*g*) See *infra*, p. 322, and repealing Act No. 2 of 1907, see *infra*, p. 325.



liable to pay road tax can be called out to work at clearing the roads, and must bring their horses if they possess any, but they are not to be taken more than three miles from their homesteads. The road tax is seventy-five cents per head per annum on every male person between the ages of twenty-one and seventy, and twenty-five cents on all horses over three years old.

**Taxation.** (*h*)—No. 8 amends the income tax law by making a married woman liable to pay income tax on her separate estate as if she were a *femme sole*.

**Bankruptcy.** (*i*)—No. 13 empowers the Court of Chancery to sell real estate of a deceased debtor in payment of his debts.

**Intoxicating Liquors.**—No. 18 amends the Prohibition Act, 1900, (*j*) by providing that that Act shall not affect *bonâ fide* transactions in liquor between a person in this province and a person in any other part of the world.

**Smoking.**—No. 19 forbids the sale of tobacco in any form to a minor under sixteen years, and any minor under that age who has in his possession or smokes tobacco is liable to a fine of five dollars or seven days' imprisonment.

## 1902

## Acts passed—39.

**Highways.**—No. 2 (*k*) amends the Public Roads Act, 1901. (*l*) The province is divided into fifteen or more road divisions, each under the control of an inspector, whose duty it is to report to the Commissioner of Public Works on the condition of the roads and bridges in his district. The road tax is raised from seventy-five cents to one dollar, and the age limit for males liable to pay the tax is reduced to sixty years instead of seventy.

**Intoxicating Liquors.**—No. 9 further amends the Prohibition Act, 1900, (*m*) by restricting the sale of liquor for medicinal purposes to legally qualified chemists and druggists. The sale must be on a certificate of a duly qualified resident physician, and must not exceed ten ounces in quantity. A separate certificate is required for each sale. Sales of liquor for use in some art, trade, or manufacture must be on the certificate of an inspector under the Act.

**Dentistry.**—No. 16 incorporates the members of the dental profession of the province into a society, and makes it penal for any person to practise dentistry for gain without he be registered or licensed pursuant to this Act. The Act does not apply to surgeons or

(*h*) See *supra*, p. 321.

(*i*) See *supra*, p. 319.

(*j*) See *supra*, p. 321, and *infra*, p. 323.

(*k*) Repealed by No. 2 of 1907, see *infra*, p. 325.

(*l*) See *supra*, p. 321.

(*m*) See *supra*, p. 321, and repealing Act No. 8 of 1905, *infra*, p. 323.

physicians temporarily filling teeth or otherwise attending to them for the prevention or cure of toothache.

**1903**

Acts passed—28.

**Married Women.**—No. 9 repeals the Married Women's Property Act, 1896, and enacts provisions similar in many respects to those of the Imperial Married Women's Property Act, 1882.<sup>(n)</sup> It also provides that the property of a married woman dying intestate is to be distributed in the same way as the property of a husband dying intestate.

**1904**

Acts passed—24.

**Revenue.**—No. 8 enables the Lieutenant-Governor in Council to appoint an officer called the Provincial Auditor, whose duty it shall be to examine and check the receipts and expenditure, etc., of the province, to report from time to time to the Lieutenant-Governor in Council, and to prepare the public classified accounts for presentation to the Legislature.

**1905**

Acts passed—25.

**Finance.**—No. 3 enables the Government to issue debentures for the purpose of consolidating the debt of the province. These debentures are not to run for more than thirty years; and the interest thereon is not to exceed  $3\frac{1}{2}$  per cent. per annum. A sum equal to  $1\frac{1}{2}$  per cent. on the amount of the debentures is to be set aside every year to be invested either in the purchase of debentures or in such other securities as the Lieutenant-Governor may agree.

**Liquor Traffic.**—No. 8 amends in many ways the Prohibition Act, 1900.<sup>(o)</sup> Liquor containing over 3 per cent. of alcohol found in premises where liquor is sold may be seized and be forfeited. All persons charged before a magistrate with being drunk and incapable are to be examined on oath as to where or from whom they obtained their liquor. Refusal to give this information to the satisfaction of the magistrate is deemed to be a contempt of Court.

**1906**

Acts passed—39.

**Fisheries.**—No. 2 empowers the Lieutenant-Governor in Council to have surveys made of the beds of rivers, bays, harbours, and creeks of the province and to grant leases of the bed of such places not

<sup>(n)</sup> 45 & 46 Vict. c. 75.<sup>(o)</sup> See *supra*, p. 321.



exceeding five acres in extent for use as oyster beds; all oysters deposited on such lands are the personal property of the leaseholder. There is no power given to lease mussel mud-beds or live oyster beds.

**Births, Marriages, and Deaths.**—No. 6, the Vital Statistics Act, requires that all births, deaths, and marriages occurring within the province must be formally registered. This was required by previous legislation, which is hereby repealed, and the law on the subject is now contained in one Act.

**Insurance.**—No. 16, the Life Assurance Act, enacts that all contracts by way of life assurance made in the province, or if assured is domiciled or resident there, can be enforced in the province notwithstanding any agreement or stipulation to the contrary. The Act defines what terms and conditions must be included in an accident policy. Insurances within this Act cannot be avoided by an inaccuracy in statements of application unless such be material to the policy. In cases where the age of assured is material a misstatement does not avoid the contract, if made in good faith or without intention to deceive, but will be a cause for a reduction of the amount to be paid to a sum that the assured would have received if the premium paid had been in respect of his real age. All wagering policies are declared illegal except certain annuities on life policies. The Act also deals with the questions arising from the pre-decease of beneficiaries, the effect of marriage on insurances, the surrender and assignment of policies, and the payment of claims to persons resident and not resident in the province.

**Game Laws.** (*p*)—No. 26 provides for the appointment of a game inspector, whose duty it is to supervise the game guardians, to prosecute offenders against this Act, and to make annual reports to the Governor. The close seasons fixed by this Act are:—Partridges, December 1st to October 1st; teal, black or blue-winged ducks, plover, January 1st to August 20th; woodcock and snipe, January 1st to October 1st; wild goose, May 10th to September 15th; brant, June 10th to October 1st; hares and rabbits, March 1st to September 1st; martin or otter, April 1st to November 1st; all shore or other birds on or along the beaches or shore bordering tidal waters, January 1st to August 20th. All birds other than game birds, excepting hawks, English sparrows, owls, and crows, are protected all the year round.

Non-residents may not hunt or shoot game without a licence (\$15). There are various provisions as to the punishment of offenders and payment of fines.

(*p*) See *supra*, p. 320, and *infra*, p. 325.

1907

Acts passed—38.

**Public Roads** (No. 2).—This Act, consisting of fifty-one sections, is a consolidating measure repealing the Acts of 1901, (*q*) 1902, (*r*) and 1903, and provides that the Commissioner of Public Works shall have the general control and supervision of all roads, bridges and highways. Various provisions are made regarding the obstruction of roads, the opening of drains, driving on bridges, etc.; but it seems unnecessary to review them in any detail.

**Intoxicating Liquor** (No. 3).—This Act amends and consolidates the various Acts relating to the prohibition of the sale of intoxicating liquor. It consists of thirty-nine sections, and provides, among other things, that no liquor is to be kept or sold except (1) to legally qualified physicians, chemists, or druggists, and (2) for sacramental purposes. It is not necessary to show that money passed in order to prove the illegal sale or barter of liquor.

Any stipendiary magistrate has power to issue a search warrant in cases where any premises are under suspicion.

**Certiorari Proceedings**.—No. 5 provides that in all cases where an appeal is given to the Supreme Court of this province, no writ of certiorari shall be issued, unless special cause is shown and notice given to the party against whom such writ of certiorari is prayed.

No writ of certiorari shall be granted unless the same shall have been applied for within one month next after judgment, conviction, order or other proceedings in the Court below.

**Game** (No. 16).—This Act amends the Act of 1906, (*s*) and provides that any resident desiring to give a "*bonâ fide* guest" a few days' shooting can obtain a permit so to do from the game inspector, or a justice of the peace for the district in which he resides. Anglers' permits may be granted by the Provincial Treasurer or by the game inspector, such permits shall not be transferable.

## 8. QUEBEC. (*a*)

1898

Acts passed—109, of which 51 were Public.

**Licences** (No. 14).—This provides for the grant of liquor licences to railway companies and inland navigation companies for the benefit

(*q*) See *supra*, p. 321.(*r*) See *supra*, p. 322.(*s*) See *supra*, p. 324.(*a*) Contributed by Edward Manson, Esq.



of travellers (s. 5). Prosecutions for the illicit sale of intoxicating liquors in licensed clubs may be taken either against the manager or the actual vendor, or against the club as a body corporate (s. 11). A penalty is imposed on any person, licensed or unlicensed, who sells intoxicants as non-intoxicants (s. 12).

**Farmers' Clubs** (b) (No. 17).—This makes it compulsory on these societies to hold meetings at which lectures, open to the public, on agriculture are to be given, on being required so to do by the Commissioner of Agriculture: in default, the provincial grant may be taken away (s. 1). Each club is to receive an annual grant at the rate of fifty cents per member.

**The Bar** (No. 27).—

*Discipline.*—This Act, which amends Arts. 3523, 3527, 3539, 3561, 3562, and 3567 of the Revised Statutes, and 58 Vict. No. 36, confers on the Council of the Bar a power to summon witnesses and examine them on oath. Every complaint against a member of the Bar is to be made under oath taken before the syndic. An appeal to the General Council is to lie only when it appears on the face of the complaint that the council had no jurisdiction (s. 2).

*Fees.*—Every member of the profession is to pay annually \$6 to the treasurer of his section if he has an office at the chef-lieu of the section, \$3 if he has an office outside (s. 3).

*Disqualification: Penalty.*—S. 4 imposes a penalty on a disqualified advocate practising. S. 5 imposes a penalty of from \$25 to \$60 on a person not an advocate practising.

**Anatomy** (No. 29).—This Act authorises the superintendent of any institution to which the Anatomy Act applies to order a post-mortem examination when it is important that the cause of death should be clearly determined.

**Physicians and Surgeons** (No. 30).—This Act makes a series of amendments as to the organisation of the council, of discipline, proceedings upon complaints, appeals, and execution of judgments.

**Civil Engineers** (No. 32)(c).—The object of this Act is to define the qualifications necessary for permission to practise as a civil engineer in the province.

*Definition.*—The expression "civil engineer" is to mean any one who acts or practises as an engineer in advising on, in making measurements for, or in laying out, designing, or supervising the construction of railways, metallic bridges, wooden bridges the cost of which exceeds \$60,000, public highways requiring engineering knowledge and experience, roads, canals, harbours, river improvements, lighthouses, and hydraulic, municipal, electrical, mechanical, or other engineering works,

(b) See *infra*, p. 346.

(c) See *infra*, p. 339.

not including Government colonisation roads or ordinary roads in rural municipalities; but it is not deemed to apply to a mere skilled artisan or workman (s. 1).

*Qualifications for Admission.*—S. 4 constitutes a board of examiners, and s. 6 prescribes the conditions of admission to practise—payment of a fee of \$40, that the candidate is twenty-one years of age, of good character, has practised engineering in the office of a member of the society for five years, and passed an examination in the theory and practise of engineering (s. 6). An unqualified person practising as a civil engineer is not to be entitled to recover for his professional services.

**Architects** (No. 33).—This Act amends the Act 54 Vict. No. 59, in certain particulars. The most important is that imposing a fine of not more than \$25 on any one taking or using the title of architect either singly or in connection with any other work giving it to be understood that he is an architect under the Act, unless he is registered as a member of the Association of Architects.

**Joint Stock Companies** (No. 35).—This Act amends the Joint Stock Companies General Clauses Act and empowers directors to make bylaws for issuing any part of the capital stock as preferred stock, and giving the same a preferential dividend. The preference shareholders may also be given a right to elect a certain number of the board or any other control over the affairs of the company. Any such bylaw must, however, be sanctioned either unanimously by the shareholders in writing or by a unanimous vote at a meeting. If sanctioned by only three-fourths of the shareholders in value, it is to come into force only after being approved by the Lieutenant-Governor in Council. Nothing done is to affect the rights of creditors.

No. 36 is an Act amending the Joint Stock Companies' Incorporation Act, (*d*) and empowering the directors in terms identical with those of the above Act to issue preference stock.

**Fire Insurance** (No. 38).—The object of this Act is to authorise the directors of mutual fire insurance companies to create a reserve fund—not exceeding \$100,000—to aid the members in years of heavy loss.

**Mutual Benefit Societies** (No. 39).—By 59 Vict. No. 34, foreign mutual benefit societies were, with certain qualifications, not to carry on business in the province. The present Act gives power to societies of this kind incorporated in any province in Canada to obtain a licence to transact business on the conditions set forth in the Act (s. 1). These conditions include a deposit of \$5000 with the provincial treasurer, the selection of a head office in the province and a chief agent to represent it, a fee of \$50 to the treasurer of the province;



also a certification that the society has carried on business for the preceding five years, insures its members only, has more than five hundred members, etc. The society is to make an annual report of its affairs to the provincial treasurer (s. 4), who may, if he thinks proper, have an inspection of the finances made by the inspector of insurance (s. 5), and, if necessary, order an additional deposit: on default, the society's licence may be cancelled.

**Life Insurance** (No. 41).—Policies of life insurance settled by husbands and parents for the benefit of their families were by Art. 5604 of the Revised Statutes made unassignable either by the insured or by the parties benefited. This is now repealed, and, instead, it is enacted that "the insured and the parties benefited may join in assigning any such policy."

**Partnerships** (No. 42).—Art. 5635 of the Revised Statutes requires partners intending to trade to make declaration of their intention, names, and residences, and of the style or trade name under which they intend to carry on business in a specified form, which is to be registered. The present Act provides that no such declaration is to be registered if it gives to any partnership the name, style, or firm name of an existing partnership.

**Shorthand Writers for Courts** (No. 48).—By this Act the prothonotary of the superior court of each district is bound to supply competent stenographers to take the depositions of witnesses in cases before the superior court, and in appealable cases before the circuit court (s. 2). The efficiency of such stenographers is to be established by examinations held by a committee of the Bar of each district, appointed for that purpose by the Council of the Bar (s. 3). The tariff of fees for taking evidence by stenography and transcribing the same is to be fixed by the Lieutenant-Governor in Council (s. 4).

**Admission to the Bar** (Nos. 93-7).—These are a series of Acts each authorising the admission of a law student—disqualified for some informality—to the Bar of the province.

**1899**      Acts passed—110, of which 56 were Public.

**Licensing** (No. 19).—The elaborate provisions of the Revised Statutes with respect to the Quebec Licence Law are amended in several particulars: thus, in the case of clubs, a person to be a *bonâ fide* member of a club must have been duly elected by ballot after his name has been posted up in the club for at least eight days previous to the balloting, and he must have paid the entrance and other fees. Further penalties are enacted against unlicensed vendors of intoxicating liquors.

**Public Lands** (No. 20).(*e*)—Under this amending Act the registration of a transfer of land is not to have the effect of exempting the transferee from fulfilling all conditions of sale to which the original acquirer was bound.

**Forest Fires** (No. 22).—This empowers the Commissioner of Forests where there has been a prolonged drought to prohibit the setting of fires for the purpose of clearing lands during the drought.

**Fishery** (No. 23).—By this Act, in substitution for the chapter in the Revised Statutes, line fishing and rod and line fishing are alone permitted in navigable waters, and rod and line fishing only is permitted in the non-navigable waters of the province; for any other mode of fishing a licence must be obtained.

Persons having their domicile in the province do not require licences to angle in the waters of the province which are not under lease, otherwise in the case of persons not having their domicile in the province. The licence-fee is never to be less than \$10.

Fishing leases may be granted by the Commissioner of Lands, Forests, and Fisheries. Such leases may be revoked for excessive fishing or fishing during prohibited seasons. Special provisions are inserted as to salmon fisheries, oyster-beds, and shell-fish.

**Game Laws** (No. 24).(*f*)—For the purposes of this Act, replacing the chapter in the Revised Statutes, the province is divided into two zones.

A close time is fixed for deer, moose, and caribou, and the use of dogs in hunting, except for red deer, is prohibited. No person is in one hunting season to kill more than two moose, three deer, and two caribou. A close season is also fixed for beavers, otters, foxes, racoons, hares, and musk-rats, for woodcock and widgeon, swallows, king-birds, warblers, finches, robins, and other birds.

Snares or traps of any kind are forbidden; also the use of firearms over a certain calibre, and strychnine or other deleterious substance. A Game Superintendent is to be appointed. No person not domiciled in the Province of Quebec can hunt unless he holds a licence. Hunting territories may be set apart.

**Education** (No. 28).(*g*)—This is an Act in nine titles (120 pp.), replacing the chapters in the Revised Statutes and dealing comprehensively with the whole machinery of public education—the Department of Public Instruction and Staff (tit. 1), School Municipalities and Districts and Dissentients (tit. 2), School Taxes (tit. 3), Public School Fund (tit. 4), Normal Schools, Fabrique Schools, and County Academies (tit. 5), Prosecutions and Penalties (tit. 6), Pensions of Officers (tit. 7), Drawing, Hygiene and Agriculture, School Libraries and Books (tit. 8),

(*e*) See *infra*, p. 343.

(*f*) See *infra*, p. 334.

(*g*) See *infra*, p. 338.



and Repeals (tit. 9). It is worthy of remark that drawing, hygiene, and agriculture are to be taught in *all* schools.

**Police** (No. 31).—This Act, replacing the chapter in the Revised Statutes, provides for the constitution and organisation of a police force. The rules as to uniform, arms, training, and discipline are to be prescribed by the Attorney-General. The pay of a first-class constable is not to exceed \$450 yearly. Special provisions are inserted for cases of urgency—*e.g.* for drafting constables to any place to quell disturbances.

**Benefit and Charitable Associations** (No. 32).—Under this Act, replacing the chapter in the Revised Statutes, if twenty persons sign a declaration setting forth certain particulars, the name of the proposed association, its purpose, directors, and the place of its head office, the Lieutenant-Governor in Council may, on petition, authorise the formation of the signatories into a mutual benefit or charitable association, with a common seal and perpetual succession, and a power to contract and to sue and be sued.

The association is to be managed by directors elected by the members, and may require security to be given by its officers. The benefits in favour of members, or the widows, heirs, and assigns of such members, are not liable to seizure for the debts of such member or for those of the parties benefited. The maximum of contributory aid is limited. Every association is subject to inspection by the Government Inspector of Mutual Benevolent Associations, who is to examine and report.

**Pharmacy** (No. 35).—By this Act, replacing the chapter in the Revised Statutes, certain substances are scheduled as poisons, and power is given to the Council of the Pharmaceutical Association of the province to declare from time to time other substances poisons. Patent or proprietary medicines are not to be interfered with, but if there is reason to apprehend that such medicines contain any of the scheduled poisons in such quantity as renders the use of the medicine in the prescribed doses dangerous to health or life, it may, on being analysed and found dangerous, be treated as a poison.

**Dentists** (No. 36). (*h*)—The instructions and examinations of dental students and the disqualification of practitioners for certain offences are the matters dealt with by this subject.

**Municipal Corporations and Bounties** (No. 41).—Under this Act no municipality is to grant a bonus to any manufacturer who proposes to establish within its limits an industry of a similar nature to one already established in such municipality without having received a bonus.

**Insurance Companies** (No. 44).—This is an illustration of the growing

(*h*) See *infra*, p. 333.

watchfulness exercised over immigrant corporations. All life and fire insurance companies not licensed under the Statutes of the Dominion and doing business in the Province of Quebec are subjected to inspection by the Inspector of Insurance. They are also required by the next Act (No. 45) to prepare annually and deposit at the Treasury Department a statement, in a prescribed form, of the condition and affairs of such company at the usual balancing day.

**Immigrant Children (No. 47).**—The deportation of children to Canada by philanthropic societies has become so common of late as to call for State regulation. Every society is by this Act, before placing children in the province, to lay before the Lieutenant-Governor its object and method of work, and the Lieutenant-Governor may then grant the society a certificate authorising it to place children in the province.

Every society is to register the name of its agent, to provide a permanent home in the province to which children may be returned, and keep a record of particulars about such children. The society's agent must visit each child once a year.

Any society placing any child of known vicious tendencies, or who has been an inmate of a reformatory, is to be liable to a fine, or may have its certificate revoked.

**Conciliation (No. 54).**—This is a class of legislation not uncommon on the Continent. The preamble of the Act recites that it is desirable to diminish the number of law suits which may arise in country places, and with this end in view it provides that in matters purely personal, affecting movables, and where the amount claimed does not exceed \$25, no demand, with certain exceptions, is to be received unless the defendant has previously been summoned in conciliation before one of the conciliators appointed by the Act. These conciliators are residents of the locality selected by the local council. Priests, Roman Catholic *curés*, justices of the peace, and the mayor of the municipality are also *de jure* conciliators. If the defendant fails to appear when summoned, he is liable for all the costs of the suit. If the conciliator gets the parties to agree, he is to draw up a minute of the agreement to be signed by each party. All declarations before the conciliator are privileged.

**1900** Acts passed—127, of which 79 were Local or Personal.

**Health : Vaccine.**—No. 5 authorises a loan to a vaccine establishment for the production of pure vaccine.

**Licences (No. 12).** (i)—This is an elaborate code of three hundred and forty-two sections in three parts consolidating the law on this

(i) See *infra*, p. 334.



subject. Part I. regulates the sale of intoxicating liquors, and the keeping of inns, restaurants, temperance hotels, railway buffets, dining-cars, steamboats, and clubs. It also regulates prosecutions for offences under the Act. Part II. deals with other licences. Part III. prescribes the duties of collectors.

Part I.—No licence is to be issued for any place where there is a bylaw prohibiting the sale of liquor under the Canada Temperance Act.

Selling intoxicating liquor in any mining district without a licence is punishable by a fine of from \$70 to \$100. No intoxicating liquor is at any time to be sold to any person under eighteen in a licensed club, and there is a penalty on such a person frequenting bars or purchasing intoxicating liquors for his own use. There is a long catalogue of penalties for offences against the Act. Every inn and temperance hotel in a village or country parts is to contain at least three bedrooms for the use of travellers, and stabling for at least four horses. In towns the number of bedrooms must be five. Not more than one drinking bar is to be kept. Intoxicating liquors are not to be sold after eight in the evening to soldiers, sailors, apprentices, or servants.

S. 147 introduces a form of family self-help in the case of drunken members. By it the husband, wife, father, mother, brothers, sisters, curator, tutor, or employer of any person who has the habit of drinking intoxicating liquors to excess—also the municipal council or mayor, *curé*, pastor, or justice of the peace, and certain other persons—may give notice in writing to any licensee not to sell or deliver intoxicating liquor to the person having such habit. Contravention of the notice exposes the licensee to a penalty of from \$10 to \$500. In addition, if the person served commits an assault or does damage in his intoxication, the licensee is liable to an action in respect of such wrong.

The duty chargeable for an inn or restaurant licence in Montreal, if the rent of the premises is \$400 or less, is \$400; or \$600 if the rent is under \$800.

Part II. requires and regulates licences for auctioneers, pawn-brokers, pedlars, ferries, billiard tables, powder magazines, circuses and menageries, and prescribes a tariff of duties.

Part III. provides for the collectors of provincial revenue making a careful search for infringements of the law.

**Taxation of Commercial Corporations (No. 13).**—This Act imposes a tax on insurance companies other than mutual or marine insurance companies. In the case of life insurance companies the tax is 1 per cent. on the gross premiums; in the case of other companies two-thirds per cent. The Act also amends the law by requiring commercial corporations or companies to return a detailed statement of their capital, offices,

factories, workshops, parlour and buffet cars, etc., to the Provincial Treasurer.

**Agricultural Societies** (No. 15).—These societies were constituted in 1869 to promote agriculture and horticulture by holding meetings and exhibitions, importing new varieties of plants, improving the breeding of animals, organising ploughing matches, etc. This Act enables the Council of Agriculture to appoint a director for each agricultural society, and provides for the election of a president and a vice-president.

**Public Buildings** (No. 22).—The importance of the doors of theatres, halls, etc., being hung so as to open outwards was recognised in 29 & 30 Vict. c 22, s. 1. (*j*) It is now extended to “shops and stores of all sizes and buildings of three stories or more over the ground floor occupied as offices.”

**Mining Companies** (No. 33).—This Act empowers mining companies incorporated by letters patent under the Great Seal of the province to prospect and explore for mines and minerals, work them, erect mining plant, acquire vessels, etc. The liability of the shareholders may be limited, provided no share is issued under par or, if a discount is allowed, it is authorised by a bylaw of the company, ratified by a general meeting, and transmitted to the Provincial Secretary. Certificates of shares are to bear the words underlined in red-ink, “Subject to call,” or “Not subject to call.”

The charter, prospectus, stock, certificates, bonds, contracts, agreements, notices, advertisements, bills of exchange, cheques, etc., of the company are to bear under the name of the company, “No personal liability.” If calls remain sixty days unpaid, the directors may confiscate and seal the shares.

Directors are to be liable jointly and severally to the labourers, servants, and apprentices of the company for all wages not exceeding one year’s, but the company must first be sued.

Foreign mining companies are not to seal their shares, stocks, or debentures in the province without authorisation from the Lieutenant-Governor. To obtain this authority the company must deposit its charter and establish its solvency. It must also appoint an agent for service within the province. The authorisation is then to be gazetted.

**Fire Insurance** (No. 34).—This extends to Church of England dioceses the same facilities for establishing mutual fire insurance companies as are now enjoyed by Roman Catholic dioceses with regard to Church property.

**Insurance Companies : Inspection** (No. 35).—This Act provides for the valuation by the official Inspector of Insurance of the policies of



insurance companies once in every five years, or oftener at the discretion of the Provincial Treasurer. The valuation is to be based on the mortality tables of the Institute of Actuaries of Great Britain, and on a rate of interest of  $3\frac{1}{2}$  per cent. per annum. "Policies" is to include annuity contracts. If the inspector is of opinion that the liabilities of the company exceed its assets, or that its assets are insufficient to justify the continuance of its business, or that it is unsafe for the public to effect insurance with it, he is to report the fact to the Provincial Treasurer.

**Guarantee Companies as Sureties (No. 44).**—A person is not infrequently obliged by law, a judgment, or an order to make a deposit to pay costs or to furnish security before the Courts. In such a case the present Act authorises his furnishing security by an incorporated surety or guarantee company having an office in the province and specially authorised by the Lieutenant-Governor to become surety before the Courts. Strict conditions precedent to authorisation are imposed. English Courts have long ago accepted the bond of a guarantee society as, say, for a receiver's security.

**1901 (k)** Acts passed—116, of which 39 were Public.

**Organisation of Departments (No. 8).**—This Act empowers the Lieutenant-Governor to appoint under the Great Seal of the province, from among the Executive Council, a Minister of Justice under the name of the Attorney-General, a Provincial Secretary, a Provincial Treasurer, a Minister of Colonisation and Public Works, a Minister of Agriculture, and a Minister of Lands, Mines, and Fisheries to preside over the corresponding departments, and defines in detail the functions of a Minister of Lands, Mines, and Fisheries, and of a Minister of Colonisation and Public Works. Further provisions are made for the appointment of deputy ministers.

**Liquor Licences.**—No. 11 amends the code of law on this subject of 1900 (l) in certain details. Intoxicating liquors are not to be sold in any liquor-shop or by any bottler at any place in the province on any day of the week from midnight until four o'clock in the morning or during the whole of Sunday, except when there is a special certificate for medicinal purposes.

**Game (No. 12).**—The Game Act of 1899 (m) contained very elaborate provisions as to game. Some of these it has been found necessary to

(k) The Session 1 Edward VII. commenced on March 19, 1901. Of the Acts passed, seventeen would in the United Kingdom be considered as private Acts.

(l) See *supra*, p. 331, and *infra*, p. 346.

(m) See *supra*, p. 329, and *infra*, p. 341.

alter or add to. No person is in one season's hunting to kill or take alive more than one moose, two deer, and two cariboo.

The close season for widgeon, teal, and wild-duck is fixed.

No person owning a dog accustomed to hunt deer is to allow it to run at large or hunt in any place inhabited by deer between November 1st of one year and October 20th of another. If found at large, the dog may be killed with impunity.

The Act also defines the right of a lessee under a sporting lease by the Commissioner of Lands, Forests, and Fisheries.

Licences to keep cold storage warehouses may be granted by the Commissioner, but such warehouses are to be open to inspection by any gamekeeper of the Commissioner.

**Mining Rights (No. 13).**—In grants of land by the Crown all mining rights are tacitly reserved and are to constitute a property under the soil independent of that of the surface. A holder of a mining licence or an owner of mining rights on private lands is authorised to work the mines thereon by notice to the surface owner on averring his readiness to pay the damages arising from such mining operations, to be assessed by mutual agreement.

**Agriculture (No. 14).**—This Act, pursuing the policy of previous Acts in encouraging farmers to show the best-kept farms by diplomas of merit, provides for the awarding of a gold medal to him among the so-called "laureates" or winners of diplomas who has most distinguished himself by maintaining perfection in cultivation.

**Police.**—No. 16 enables every police magistrate or judge of the sessions of the peace to appoint one or more constables if necessary to carry out his orders, and to administer the required oath.

**Public Health (No. 19).**—This Act amends and consolidates the law relating to the Board of Health for the province, occupying itself with "everything which concerns public health and salubrity" in the province. Four at least of its members are to be physicians. The Board is to have power to appoint an inspector of health, analysts, a sanitary engineer, a statistician, and other necessary officers.

The Board is to meet quarterly or oftener. Its duties are—

- (1) To make a special study of the medical and vital statistics of the province ;
- (2) To make sanitary investigations and inquire into the causes of disease and epidemics, and the effect which the employment, conditions, habits, and other circumstances of the people may have on their health ;
- (3) To superintend the formation of local boards of health ;
- (4) To advise municipal councils and local boards ;
- (5) To distribute to the public circulars on hygiene.



The Board may make bylaws for the sanitary regulation of educational institutions, workshops, hospitals, asylums, houses, dairies, cowsheds, slaughter-houses, etc., for construction of drains, sewers, and for preventing nuisances.

Every municipality which has not already a local board of health is to establish one, and such local board when established is to execute the orders of the Board of Health of the province. When a municipality is threatened with an epidemic, the Board of Health may insist on the appointment of a medical officer of health, to be paid by the municipality.

The Lieutenant-Governor in Council may at the instance of the Board of Health of the province appoint medical officers to act in any unorganised territories.

The municipal local Board of Health is to visit by its executive officer from time to time the immovable property of the district, to discover any nuisances, and, if found, to abate them by notice to the owner, who in default is liable to a penalty of \$100 a day.

Plans by any municipality for supplying drinking water or for drainage works must first be submitted to the Board of Health of the province.

The seller of unwholesome food or drink is liable to a fine of \$50. The health officer of the municipality may further inspect all food or liquid offered for sale which is intended for human consumption.

Householders and physicians are required to report cases of epidemic diseases to the municipal sanitary authority, which again is to notify the Board of Health of the province. Provision is made for the establishment of hospitals, refuges, houses for quarantine, and for ambulances. The Board of Health is empowered to make bylaws for ensuring the health of persons in industrial establishments, and penalties are imposed for infraction. Districts having, or threatened with, an epidemic may be proclaimed, and a scheme of drastic sanitary regulations enforced in such districts.

Every municipal council may order that vaccination and revaccination shall be compulsory within the limits of the locality. If a child is unfit for vaccination, it is to be so certified by a medical practitioner.

A fine of \$5 is imposed for non-compliance with vaccination regulations. Returns of births, marriages, and deaths are also provided for.

**Municipal Subsidies (No. 28).**—No subsidy is to be granted by any municipality to attract within its limits an industrial establishment already established in the province.

**Trade Disputes and Councils of Conciliation and of Arbitration**  
(No. 31). (n)

*Councils of Conciliation.*—By s. 4 the Lieutenant-Governor may appoint a Registrar of Conciliation and of Arbitration, whose duty it is to receive applications for reference of disputes to a Council of Conciliation. A Council of Conciliation is to consist of four conciliators, two to be nominated by each of the parties to the dispute. A dispute may be referred though only one of the parties lodge an application.

The parties are to draw up a joint statement of the case in writing; if they cannot agree, each party is to draw up a separate statement. The Registrar is then to convene the council, and the council, after taking cognisance of the dispute, hearing the parties and endeavouring to conciliate, is to send a report of the result to the Registrar. If conciliation fails, the parties, or either of them, may proceed to arbitration under the following scheme:—

*Councils of Arbitration.*—There are to be two of these: one council for disputes between railways and their wage-earners, another council for disputes other than railway disputes. Each council is to consist of three members—one member to be appointed by the employers, another by the employees, and the third by the Lieutenant-Governor on the joint recommendation of the two representative members. Each member is to hold office for two years, and to be remunerated at rates to be fixed by the Lieutenant-Governor in Council.

The representatives of the employers and employees are to be chosen by vote. Every employer in the province having ten persons in his employment is to be entitled to one vote for his representative, and every trade union, labour council, or organisation of wage-earners is entitled to one vote for the employees' representative. In the case of railways, every organisation representing the interests of railway wage-earners has a vote.

Disputes are to be referred to the Arbitration Councils by an application in a statutory form. The meetings of the Councils of Arbitration are to be public, and the president is, for the purpose of keeping order, to have all the powers of a judge of the Superior Court.

Either party to a referred dispute may at any time before award made agree in writing to be bound by the award.

**1902** Acts passed—128: Public, 42; Local and Personal, 86.

**Colonisation and Forest Industry** (No. 3).—This Act, reciting that colonisation and forest industries are the most important factors in the

(n) See *infra*, p. 341.



progress of the province, authorises the Lieutenant-Governor in Council to appoint a Commissioner to make a critical study of the law relating to public lands, woods, and forests, colonisation societies, works, and roads, and the protection of settlers, to find out what sections of the country are most suitable for colonisation, the sufficiency of roads, the building of bridges, and the grant of subsidies to railway companies, and to study any new proposals or systems calculated to foster colonisation and the development of forest industries. Power is given to the Commissioner to summon witnesses and require production of papers, etc.

**Mining** (No. 15).—By this Act no sales of mining concessions of more than four hundred acres in superficies are, in the case of the superior metals, to be made to the same person; but a power is reserved to the Lieutenant-Governor in Council to make a larger grant not exceeding one thousand acres, upon proof of the grantee's capital and resources.

**Education** (Nos. 16, 17, and 18).—These Acts contain some small amendments of the Education Act, 1899, (*o*) the only one of importance being a provision for an annual census of children attending school, distinguishing certain age categories.

**Churchwardens** (No. 22).—This Act enables churchwardens to withdraw from their office by notice in writing.

**Bar Council** (No. 23).—Under the name of "The Bar of the Province of Quebec," the advocates, barristers, counsel, attorneys, solicitors, and proctors at law, designated shortly by the name of "advocates," form a corporation entitled "The General Corporation of the Bar." The present Act provides that the power of this corporation may be exercised by a council, called "The General Council of the Bar of the Province of Quebec," to consist of the batonnier and three delegates from the section of Montreal, the batonnier and two delegates from the section of Quebec, and the batonnier and one delegate from each of the sections of Three Rivers and St. Francis, and the batonniers of Arthabaska, Ottawa, and Bedford. The Attorney-General of the province is *ex-officio* member of the General Council. Power is given to make rules for the regulation of stenographers. A penalty is imposed on any person acting as intermediary between a party and his advocate who promises or makes to such party a rebate in the advocate's fees.

**Dentists** (*p*) (No. 24).—A contribution to the Dentists' Association is required from every member. A member in arrear after notice loses his right to practise.

**Civil Engineers**.—No. 25 provides for civil engineers accidentally

(*o*) See *supra*, p. 329.

(*p*) See *supra*, p. 330, and *infra*, p. 344.

excluded from the Act of 1898 (*q*) being admitted to practise in the province if duly qualified.

**Veterinary Surgeons** (No. 27).—The Act provides for the incorporation of the graduates of certain veterinary schools in the province under the name of "The Board of Veterinary Surgeons of the Province of Quebec." The affairs are to be conducted by a Board of Governors, called "The Provincial Veterinary Board." No person is to practise veterinary surgery in the province unless he has a licence from this Board. Examiners are to be appointed to examine candidates for the study of veterinary surgeons, and a register of persons who have qualified is to be kept. No person unless registered is competent to recover fees for services.

**Joint Stock Company** (No. 30).—By this Act a company is empowered by a simple resolution to issue notes payable to order or bearer for the settlement of accounts or other current matters.

A company may also, on a resolution of two-thirds of the shareholders present at a meeting specially convened for that purpose, issue bonds or debentures to the amount of two-thirds of the total value of its immovable property, and such bonds or debentures are, on registration, to constitute a privilege claim in favour of the holders, and give a right of preference over all debts and claims posterior to the issuing of such debentures. A company may grant a hypothec upon its immovable property as security.

No. 31 enables directors at any time to make a bylaw subdividing existing shares into shares of smaller amount.

**Dairy Produce** (No. 32).—Any five or more persons engaged in the manufacture of butter and cheese may under this Act associate themselves for the purpose of carrying on a Butter and Cheese Exchange, and obtain incorporation. The bylaws are to be filed in the office of the public notary of the district, and a statement of the business transacted is to be transmitted every year to the Minister of Agriculture.

**Agricultural Syndicates** (No. 33).—These syndicates have for their object the protection and defence of agricultural interests. They are co-operative associations in the nature of limited joint stock companies for consumption, production, and credit, and are to be formed by persons directly interested in agriculture or colonisation—as proprietors, farmers, domestic servants, or hired workmen. The syndicate may buy for resale to its associates only articles necessary for the support of life or the works of their industry; may open up credits for them and make loans to them, establish works in common for the associates, or permit of their devoting themselves to processes of production, and selling the products thereof either collectively or individually. Farmers' clubs



and agricultural societies may, with the permission of the Minister of Agriculture, subscribe to such syndicates. The shares are to be to order, and are only to be transferred according to the bylaws of the association. The syndicate is to be formed by the members subscribing a declaration in statutory form. It is to be managed by a board of five members, which is to meet at least once every month, and is empowered to do everything, subject to the bylaws, connected with the interests of the association. The board of management is to be controlled by a board of supervision consisting of three, which may at any time convene an extraordinary meeting of the association. The general meeting of shareholders is to be held in January each year, and is to determine the amount of profits which it shall allot.

**Mutual Fire Insurance Companies (No. 35).**—The board of directors is in no case to issue a policy for an amount exceeding \$5000 on one risk. The amount of insurance effected in cities and towns is not to exceed twenty-five per cent. of the total insurance effected by the company.

**Probate (No. 37).**—When any person who has had, and has ceased to have, his domicile in the Province of Quebec dies outside the province, having made outside the province a will which is valid under the law of the province, and such person leaves property in the province, his will may be proved in the province in any district in which he may have left property, as if the will had been made and the person domiciled therein.

**Traders and Marriage Contracts (No. 38).**—Every married person doing business as a trader, whether alone or in partnership with others, is to register in the office of the Prothonotary of the Superior Court of the district within sixty days from the day on which trading commenced, or from the date of the marriage, a declaration in writing stating if he is under community or is separate as to property—in case of a community of property, if by contract of marriage, and in case of separation of property, if by marriage contract or by judgment.

## 1903

Acts passed—155, of which 60 were Public.

**Legislative Disqualification (No. 8).**—By this Act no person holding an office of emolument under Government is with certain necessary exceptions eligible as a Legislative Councillor or as a member of the Legislative Assembly.

**Elections (No. 9).**—This is an Act regulating in great detail the election of members of the Legislative Assembly.

**Education of Jewish Children (No. 16).**—Jewish parents have, it

appears, claimed the right to have their children educated at the schools under the control of the school corporations—sending the children almost exclusively to Protestant schools. The school boards on their part have refused to acknowledge the claim where the parents are not proprietors of immovable property subject to taxation for the benefit of the schools. The present Act settles the dispute. Jews are to be treated as Protestants for school purposes, and are to pay the school taxes; but Jewish children are not to be compelled to read any religious or devotional books, or take part in any religious exercises to which the parents object.

**Taxation.**—No. 19 puts a tax on every express company foreign to the province carrying on the express and forwarding business.

**Game Laws** (*r*) (No. 23).—This makes the close season for widgeon, teal, or wild-duck of any kind except sheldrake, loons, and gulls, March 1st to September 1st. Birch or swamp partridges must not be bought or sold or exposed for sale before October 1, 1905. A bounty of \$5 is to be paid for every wolf's head.

**Trade Disputes** (*s*) (No. 25).—Where a dispute exists or is apprehended between employers and employed the Registrar of the Council of Conciliation and Arbitration is, on request by five workmen or the employer, or the mayor, to visit the locality and “earnestly endeavour to act as mediator.” He is also to do so if the dispute comes to his knowledge through the newspapers.

The Registrar's duty is (1) to inquire into the causes of the dispute; (2) to prevail on the parties to meet and settle such dispute; (3) to promote agreements to submit differences to a council of conciliation or arbitration.

**Judicature : The Magdalen Islands** (No. 26).—This provides for an appeal from the Court of these islands to the Court of King's Bench at Quebec.

**Judicature : Salaries** (No. 27).—The annual salary of each judge of the sessions of the peace is to be \$4000.

**Bar Corporation.**—No. 34 amends the Revised Code as to the profession of advocates; thus, for the examination of candidates a professor of every university law faculty is to be associated with the examiners appointed by the Council of a section. To the disqualifications of advocates enumerated by the Revised Code is further added being found guilty of conspiracy to defraud.

**Notaries** (No. 35).—This amends in a number of particulars the regulations with regard to notaries, who in the province are represented and governed by “the Board of Notaries.”

(*r*) See *supra*, p. 334, and *infra*, p. 348.

(*s*) See *supra*, p. 337.



**Pharmacy (No. 36).**—Nothing is to prevent chemists and druggists selling all medicinal preparations containing alcohol so long as these are sold for medicinal use only: or from selling rectified spirits for medicinal, mechanical, or scientific purposes in quantities of not more than one imperial pint; but every such sale must be recorded.

**Municipalities (No. 38).**—This is a very long and elaborate Act, called “The Cities and Towns Act,” creating a municipal code applicable to cities and towns of the province now or hereafter to be erected into municipalities. Title II. deals with the organisation of the municipality—the constitution and jurisdiction of the corporation, division into wards, the council, mayor, aldermen, committees, and officers of the Council; Titles III. and IV. with the persons qualified and disqualified for office, with the electors and the conduct of elections; Title X. with the powers of the Council and the making of bylaws for the protection of persons and property, and in the interests of public health, decency, and good morals. It also deals with street lighting, water supply, nuisances, free public libraries, census, municipal finances, taxes and licences. Title XII. deals with the Recorder’s Court, its jurisdiction and procedure.

The Act is a striking recognition of the growing importance of the municipality in the national life.

**Companies (No. 41).**—Joint stock companies in the province are incorporated by letters patent obtained on petition to the Lieutenant-Governor by not less than five persons. This Act amends the law by requiring that the aggregate amount of stock taken by the applicants for letters patent must be at least one-half of the total amount of the authorised stock of the company, and that 10 per cent. shall have been paid up thereon. The amount paid must, moreover, be standing to the credit of the company in some chartered bank within the province.

Additional powers may be granted the company by supplementary letters patent. This is the equivalent of the English Companies (Memorandum of Association Alteration) Act, 1890. (*t*) Notice of such grant is to be gazetted.

Where capital has been divided into preferred and ordinary shares, the directors may, with the consent of two-thirds of the holders of such preferred shares, cancel them and declare that all the shares shall rank equally.

**Fisheries (*u*) (No. 45).**—The Government of Canada gives financial aid to promote the establishment of Fishermen’s Bait Associations. This Act supplies a simple and inexpensive mode of incorporating such associations, viz. by twenty or more persons formed for providing bait

(*t*) 53 & 54 Vict. c. 62.

(*u*) See *infra*, p. 348.

signing a memorandum of agreement, on which letters patent are granted without fee.

**Ill-usage of Servants: Singers and Actors (No. 46).**—The penalty for ill-usage of servants by masters, mistresses, or employers is extended to professional singers and actors engaged by the day, week, or month, or by the season.

**Marriages: Immunity of Minister (No. 47).**—A minister who has performed any marriage ceremony under the authority of a duly issued licence is not to be liable to damages because of any legal impediment to the marriage if at the time he was not aware of the impediment. The times for the due publication of banns are declared.

**Companies (No. 48).**—This Act provides for the liquidation of non-commercial joint stock corporations or companies which have ceased payment.

**Evidence (No. 53).**—This amends the Civil Code as to husband and wife being examined as witnesses against one another in certain cases.

**Seizure of Salaries or Wages (No. 57).**—This provides a mode by which a judgment debtor may on deposit of certain amounts and certain declarations made protect himself from having his salary or wages seized by garnishment.

**1904** Acts passed—Public, 36 ; Private and Local, 88.

**Pawnbrokers (No. 11).**—Pawnbrokers may sell pledges not redeemed within one year without the formality of a judgment.

**Public Lands and Forests (No. 13).**(x)—This Act amends in a number of particulars the law as to the sale and management of public lands, woods, and forests.

Crown lands agents are bound to sell lands classified as suitable for cultivation to any *bonâ fide* settler who applies on the conditions and at the price fixed by the Lieutenant-Governor in Council, but the amount is not to exceed two hundred acres.

Settlers obtaining a lot of land from the Crown for colonisation purposes are to furnish a declaration stating that they have fulfilled all the conditions set forth in the location ticket up to the date of the declaration. A sale may be cancelled for fraud. No person is to obtain letters patent from the Crown for more than three hundred acres of land for colonisation purposes by means of transfers from the original purchaser from the Crown. No timber dues are to be exacted on any timber cut by settlers on lots regularly acquired by location ticket from the Crown where such timber is cut in good faith during clearing operations.

(x) See *supra*, p. 329, and *infra*, p. 348.



**Mines** (No. 16).—Timber of all kinds is reserved by law in favour of the Crown upon lands sold as mining lands in a territory which is not under licence to cut timber.

**Dentists** (*y*) (No. 28).—This Act makes certain amendments in the constitution of the Board of Governors of the College of Dental Surgeons and the scheme of instruction in dentistry. Assessors from the members of the College are to attend the examinations.

**Early Closing of Shops** (No. 29).—The Early Closing Act of 1894 gave municipal councils powers to make bylaws on the subject, but provided no penalty for infringement of any such bylaw. Infringement is now punishable with a fine not exceeding \$40, and in default imprisonment not exceeding two months.

**Automobiles** (*a*) (No. 30).—In Quebec, as elsewhere, the licence of the automobilist has called for a legislative check. "Automobile" in the Act comprises "all vehicles moved by any power other than muscular force excepting railway and tramway cars, and motor vehicles running only on rails or railroads."

An automobile is not to be driven at a speed greater than six miles an hour within the limits of a city, town, or village; nor at a speed greater than fifteen miles an hour in any other municipality. Every person having the control of an automobile is on the approach of any horse ridden or driven to so manœuvre the automobile as to take every reasonable precaution to prevent such horse being frightened and to safeguard the rider or driver; he must slacken speed, and if signalled by the lifting of the hand of the rider or driver he must not approach any nearer until the horse appears under control. Disobedience is punishable summarily by a fine not exceeding \$20, or in default imprisonment not exceeding one month.

**Joint Stock Companies** (No. 33).—The same difficulty which led in England to the Companies (Alteration of Memorandum) Act, 1890, (*b*) has occurred here, but the Quebec Act has a wider scope than the English Act. The Lieutenant-Governor may on petition grant a company supplementary letters patent conferring additional powers or authorising any modification or repeal of the existing powers.

A company is not to commence its operations or contract any obligation before 10 per cent. of its authorised capital has been subscribed and paid up.

Power is given to issue debentures and to secure their payment by hypothec. Such debentures, if registered, are given a privilege claim over all other debts of the company. Shares may be subdivided.

(*y*) See *supra*, p. 338.

(*a*) Repealed by No. 13 of 1906, *infra*, p. 347.

(*b*) 53 & 54 Vict. c. 62.

**Extra-Provincial Companies (No. 34).**—No extra-provincial corporation (with certain exceptions) is to carry on business in the province of Quebec unless a licence has been granted it, and to obtain this licence the corporation must (i) deposit in the office of the Provincial Secretary a copy of its charter, articles, or other deeds constituting the corporation; (ii) establish that it is so constituted as to carry out the obligations it may contract; (iii) deposit also a power of attorney constituting a chief agent in the province to receive service; (iv) pay the fees for the licence. Under such licence, when obtained, the extra-provincial corporation may acquire, hold, mortgage, and sell removable property in the province as if incorporated within the province, may carry on business and exercise all powers covered by the licence.

Any person doing business for an unlicensed extra-provincial corporation is liable to a fine not exceeding \$100, and in default three months' imprisonment.

**Railways.**—No. 35 amends the law respecting railways in a number of particulars, the meaning of "working expenses," care in crossing bridges, speed in thickly peopled parts of cities, grade crossings, fares, carrying gongs, and inspection.

**Timber (No. 39).**—Lumbermen must mark their logs, unless exclusive ownership is proved. Unmarked logs in a drive on lakes, rivers, and streams in the province are by this Act to belong to all who drive in the same lake or river.

## 1905

Acts passed—116, of which 39 were Public.

**Organisation of Departments (No. 12).**—This is an Act dealing with the various offices of State, the Ministry of Justice, of Lands and Forests, of Agriculture, of Mines and Fisheries, of Public Works and Labour, by way of amendment, etc., regulating appointments to the offices and defining the duties.

**Licences (No. 13).**—*Liquor.*—This Act amends the liquor licensing law in a number of particulars. Bringing intoxicating liquors into any mine is made an offence punishable with a fine of from \$20 to \$50.

*Bowling Alleys.*—A licence (\$5) is required for each alley bed in a bowling alley.

*Loan Offices.*—A \$5 licence is made necessary for keeping a loan office or private bank.

*Billiard Tables.*—A licence is required except in the case of clubs; \$60 for a single table.

*Commercial Travellers.* Non-resident commercial travellers, soliciting orders for a person with no place of business in Canada, must take out a licence.



**Taxes on Transfers of Securities** (*c*) (No. 15).—A stamp duty at the rate of two per cent. for every \$100 is imposed on the transfer of shares, bonds, debentures, and debenture stock.

**Inspection of Butter and Cheese Factories** (No. 17).—The inspection of butter and cheese factories on behalf of the Ministry of Agriculture is to extend to every detail—the ice houses, machines, instruments, as well as the milk, butter, and cheese. Any interference with an inspector is punishable with a fine not exceeding \$20.

**Farmers' Clubs** (*d*) (No. 18).—A general meeting of the club is to be convened every year, at which lectures on agriculture are to be given. Such lectures are to be open to the public.

**Incorporation for Religious Bodies** (No. 21).—Numerous Protestant congregations exist in the province which own property, but have no charter. This Act provides an easy and inexpensive mode of incorporation by petition to Lieutenant-Governor in Council.

**1906** Acts passed—114: Public, 44; Local and Personal, 70.

**Railways.**—No. 2 deals with the appropriation of the price of the Quebec, Montreal, and Occidental Railway to the payment of the consolidated debt of the province.

No. 3 provides for subsidies to certain railways.

**Government Claims** (No. 4).—A right of retainer out of any deposit made by the Government debtors in the Treasury is given to the Provincial Treasurer.

**Licences.**—No. 9 (*e*) amends licensing law in a variety of particulars.

**Liquor.**—The number of hotel and restaurant licences is fixed for the City of Quebec at a maximum of 400. Taxes and transfers are also fixed. Auctioneers may, under a liquor licence, sell liquor as part of stock. A trader not holding a liquor licence may not take orders for the supply of intoxicating liquors or act as an intermediary for that purpose.

**Billiard Tables.**—No person holding a licence for a billiard table is to allow any apprentice, schoolboy, or person under eighteen to play thereon, under a penalty. The same rule applies to bowling alleys.

**Loan Office.**—A licence to keep a loan office may be cancelled at the discretion of the Provincial Treasurer.

**Commercial Travellers.**—The affidavit for a licence for this purpose must give the name and address of the commercial house represented, the nature of the business, and whether the orders solicited are wholesale or retail.

(*c*) Repealed by No. 12 of 1906, *infra*, p. 347.

(*d*) See *supra*, p. 326.

(*e*) See *supra*, p. 334.

Non-resident Stockbrokers coming into the province to do business must obtain a licence, to be granted for six months.

Brokers, resident but not members of Stock Exchange, must register.

Agents of foreign Stockbrokers must obtain a licence.

*Circuses and Menageries*.—A licence must be obtained for these.

**Revenue (No. 10).**—An annual tax is hereby imposed on companies, corporations, partnerships, associations, firms, and persons doing business in the province, whether in his or its own name, or through an agent. Trading companies, banks, insurance companies, navigation, telegraph, telephone, railway, tramway, and trust companies, all come within the scope of the Act. The tariff or scale of taxation is fixed for each, *e.g.* in the case of railway companies, \$10 for each mile of railway in operation; in the case of trading companies, one-eighth of 1 per cent. of the paid-up capital up to a million.

**Tax on Transfer of Shares (No. 12).** (*f*)—This imposes a stamp duty at the rate of two cents for every hundred dollars on every transfer of shares, bonds, debentures, or debenture stock.

**Motor Vehicles (No. 13).** (*g*)—"Motor vehicle" comprises all vehicles propelled by any power other than muscular force, excepting railway and tramway cars and motor vehicles running only on rails or railroads, and road rollers and traction engines.

Every owner of a motor vehicle is to file with the Provincial Treasurer a statement of his name and address and a description of the motor, factory number, name of manufacturer, motive power, and is to pay a fee of \$5. Thereupon the motor is to be registered and a certificate given to the owner, together with a number and a metal or leather seal, which is to be affixed in a conspicuous position, with letters four inches in height and one in width. Manufacturers may apply for a general distinguishing number.

Every person who desires to operate a motor as a chauffeur must obtain a chauffeur's licence and badge. No such licence is to be granted till the applicant has given proof of his qualifications to the satisfaction of the Provincial Treasurer. The licence must be annually renewed. It may be revoked or suspended for a violation of the Act.

A person desiring to operate a motor otherwise than as a chauffeur must also obtain a licence and give evidence of his qualifications to the Provincial Treasurer.

A motorist is so to manœuvre his motor as to prevent horses being frightened, to safeguard riders and drivers: if necessary he is to stop. Every motor is to be provided with brakes, shrill horns, or other mode of signalling.

(*f*) See *supra*, p. 346.

(*g*) See *supra*, p. 344.



The rate of speed within the limits of a city, town, or village is not to exceed six miles an hour or fifteen miles an hour in any other locality. On bridges, at sharp turns, and on steep descents, the speed is to be reduced to four miles an hour. Contravention of the Act is punishable with a fine of from \$20 to \$100; in default of payment, imprisonment for one month, the punishment being doubled for a second offence.

**Trust Companies** (No. 14).—All Trust Companies are to be subject to inspection by an officer of the Treasury Department, and to facilitate the inspection, each such company is each year to file with the inspector a report of its operations during the previous year. This report is to include—

1. A list of the company's officers and members;
2. A statement of the authorised capital;
3. A statement of the capital subscribed;
4. A statement of the investments of the company in the province;
5. A list of the estates for which it is acting as trustee, etc.;
6. A statement of the company's assets and liabilities;
7. A statement showing the dividends declared and paid; and
8. Any other or further particulars required by the Provincial Treasurer.

**Public Lands.**—No. 15 (*h*) amends the law in certain particulars as to forest reserves. Trees are to be cultivated so as to secure a constant supply of timber; locomotive engines passing through forests are to be provided with the most efficient means of preventing the escape of sparks.

**Game in Gaspé.**—No. 7 provides for the preservation of forest, fish, and game in certain unsurveyed lands of the Crown in this peninsula.

**Fishery.**—No. 18 (*i*) amends the Quebec Fishery Law in a number of matters of detail. A fishery overseer may determine the distance between every fishery. No person is to obstruct any fishway. Whoever uses dynamite or other explosive to catch fish is liable to imprisonment for thirty days.

**Game** (No. 19) (*k*).—This, like the above Fishery Act, makes a number of amendments in the Quebec Game Laws.

Every bag or box for transport of game is to be made in such a way that the contents can be seen. The close season is altered for beaver, hare, bear, and muskrat; also for widgeon, teal, wild duck. Swamp partridge or woodcock are not to be sold before October 1st. Persons

(*h*) See *supra*, p. 343.

(*i*) See *supra*, p. 342.

(*k*) See *supra*, p. 341.

engaged in the fur trade are to make returns of animals, vessels, boats, sheds, cars, etc., and search for game, furs, or skins killed. Inspectors and gamekeepers may enter. A table of fines is fixed for violations of the Act. A special licence from the Minister is required for the hunting of moose, cariboo, or deer. No person not domiciled in the province can hunt therein without a special licence.

**Stock-breeding Syndicates (No. 20).**—Syndicates for the breeding and improvement of farm stock may be formed as joint stock companies, and shares in such syndicates may be taken by farmers' clubs and agricultural societies, with the permission of the Minister of Agriculture. Only registered thoroughbred stock, free from hereditary defects, can be kept for breeding purposes. There are general provisions regulating the constitution and management of the syndicate.

**Homesteads (No. 21).**—The protection of the homestead is one of the most remarkable developments in the legislation of Canada and Australia. This Act permits the owner of a homestead, on certain conditions, and with certain formalities, to hypothecate it.

**Dairy Associations (No. 22).**—A "dairy association" is to be composed of at least fifty persons contributing \$1 each. Rules may be made for the admission of new members. The inspectors are to be experts holding certificates of competency. Annual grants may be made to the associations by the Lieutenant-Governor in Council, on their fulfilling the terms imposed.

**Joint-stock Companies (No. 31).**—Every bylaw for changing a company's chief place of business is to be published in the *Quebec Official Gazette*.

**Railways (No. 32).**—All bylaws are to be submitted to and approved by the Railway Committee, who may approve such bylaws in whole or in part, or alter or vary them. No toll is to be charged which unjustly discriminates between different localities. No company is to pool its freight or tolls with any other railway company or any common carrier.

**Co-operative Syndicates (No. 33).**—Co-operative syndicates for consumption, production, and credit may be formed in the nature of a joint-stock company, with limited liability. The object of such syndicates is to be to study, protect, and defend the economic interests of the labouring classes, and for this purpose the syndicate may buy, for resale to the associates only, such articles as are necessary for the support of life or for the works of that industry, open up credits for them and make loans to them, establish works in common for the associates, or allow them to devote themselves to processes of production and selling the products thereof, either collectively or individually. Farmers' clubs and agricultural societies may take shares in such



syndicates with the permission of the Minister of Agriculture. The association is to be managed by a "board of management," composed of at least five members. There are full regulations as to the constitution and management of such associations.

**Clubs** (No. 35).—Clubs may, by resolution of a general meeting, change their name on depositing copies of their resolution with certain officials, and publishing notice of the change in the *Quebec Official Gazette*.

**Game** (No. 36).—Fish and Game Clubs, that is, sporting clubs formed for the enforcement of the laws regulating game, are to forward to the Minister of Colonisation, Mines, and Fisheries every year, a certified list of members and another list of guests and visitors, giving their usual residence.

**Fines** (No. 37).—Fines may be recovered by action as debts. The Crown, or a municipal corporation (where the fine is for breach of a bylaw), may intervene at any stage in the proceedings. In cases of bylaw fines, one-half is to go to the prosecutor and one-half to the municipality.

**Civil Death** (No. 38).—Civil death is abolished. Condemnation to death, or to perpetual personal punishment is to carry with it civil degradation. Civil degradation consists—

1. In the removal of the condemned person from all public functions, employments, or offices ;
2. In deprivation of the right to vote or to be elected, and generally of all civil and political rights ;
3. In disqualification as a juror, arbitrator, or expert, and as witness to any deed or from giving evidence in court.
4. In disqualification from forming part of any family council, acting as administrator or trustee, and from being tutor, curator, subrogate, tutor, or judicial adviser.

Such condemned person is, further, in a state of interdiction, and may have a curator appointed to him to manage and administer his property. He cannot dispose of any part of his property by gift *inter vivos* or by will, nor receive anything but an alimentary allowance. Any will made by him prior to his condemnation is to be void.

A pardon is to restore him to his rights, civil and political.

**Usury** (No. 40).—Where a debt is made up of interest exceeding the legal rate, and seems to the Court to be usurious, the Court may order such usurious interest to be paid by instalments and fix the amount of such instalments at its discretion.

**1907** Acts passed—161, of which 61 were Public.

**Labour Accidents** (No. 5).—The Lieutenant-Governor in Council is empowered to appoint a commission to make a critical study of the Laws and Jurisprudence of different countries concerning labour accidents; to seek for just and equitable rules determining the remedies, and the legal relations resulting from accidents in connection with labour, and to consider the desirability of making insurance of employees obligatory.

**Motors** (No. 16).—The owner of a motor vehicle for which a certificate is issued is to be held responsible for any violation of the Act or any regulation under it, and for all accidents or damages caused by his motor vehicle upon a highway or public square.

Persons may be arrested without warrant in certain cases and the motor vehicle detained.

No motor vehicle shall be driven on a public highway at a rate of speed greater than is reasonable and proper, having regard to the traffic and use of the highway, or so as to endanger the life or limb of any person, or the safety of any property; nor in any event at a speed greater than nine miles an hour, within the limits of a city, town or village, or on any public highway where the territory contiguous thereto is closely built up, and of fifteen miles an hour in any other locality.

“No intoxicated person shall drive a motor vehicle.” “No person shall drive a motor vehicle upon any public street, road, or highway in a race or on a bet or wager.”

**Companies** (No. 48).—This is a code of Company Law, of ninety sections, for the province. It deals with existing companies and with the formation of new companies, the general powers and duties of a company, the liability of shareholders, capital stock, increase and reduction of capital, calls, transfer of shares, borrowing powers, dividends, directors and their powers, general meetings and inspection.

The general scheme of the Act is very similar to the English company system, with slight deviations. Thus a company is not to commence operations or incur any liability before 10 per cent. of its authorised capital has been subscribed and paid. If further corporate powers are needed the directors, on the authority of a resolution of shareholders, may obtain a supplementary letters patent. The creation of preference shares requires the sanction of a vote of three-fourths of the shareholders.

**Dairy Patrons** (No. 51).—This is apparently a scheme for the co-operation of the farmer and the butter or cheese manufacturer. Twenty-five persons or more may form a society of patrons of a manufactory of



dairy products, for each cheese factory, or butter factory, or cheese and butter factory existing in a locality. The amount of each share is \$10, payable by yearly instalments of \$1. Shares are transferable. The object of the society is the protection of its members in the manufacture and sale of dairy products. It may purchase or build a cheese factory, or a butter factory, or a butter and cheese factory, and may operate, lease, or sell them. The board of directors may by bylaws make arrangements in the name of the society with the owner of a factory for the manufacture of dairy products from milk and cream supplied by the directors, make bylaws with regard to the quality and the carriage of milk and cream delivered to the factory chosen by the society for the use of its members, and sell the products manufactured by such factory and belonging to its members.

## 9. SASKATCHEWAN. <sup>(a)</sup>

**1906** Acts passed—64, of which 19 are classed as Local or Private.

By the provisions of the British North America Act, 1871, <sup>(b)</sup> the Parliament of Canada has power to establish new provinces in any territories forming for the time being part of the Dominion of Canada. By the Saskatchewan Act of 1905 <sup>(c)</sup> two new provinces were formed out of the North-West Territories.

The Act provides that the new province is to be governed, until its Legislature otherwise provides, in the same way as the North-West Territories are governed.

The first session of the first Legislature began on the 29th day of March, and closed on the 26th day of May.

**Legislature** (No. 4).—The Legislative Assembly Act defines the qualifications for a Legislator and the procedure to be employed in the Legislative Assembly. It also provides that members are to receive \$1000 for each session, together with certain travelling expenses.

**Public Service** (Nos. 5, 7–11).—The Public Service Act (No. 5) defines the public service of the province as including the Clerk of the Legislative Assembly, the Provincial Auditor, and all employees in the office of the Executive Council, the Departments of the Attorney-General, Provincial Secretary, Treasury, Public Works, Agriculture,

<sup>(a)</sup> Contributed by H. Stuart Moore, Esq.

<sup>(b)</sup> 34 & 35 Vict. c. 28.

<sup>(c)</sup> See *supra*, p. 183.

Education, Railway Commission and offices of the Legislative Assembly. Acts Nos. 7-11 define the duties of the Departments of the Attorney-General, Provincial Secretary, Agriculture, Public Works, and Railway Commission.

**Steam Boilers** (No. 15).—This Act provides for the inspection every year of steam boilers carrying more than 15 lbs. pressure of steam. After inspection a certificate is granted which is only *primâ facie* evidence of due inspection of the boiler and its fitness. Persons operating steam boilers must be certificated after examination in the theory and practice of operating a steam boiler. On due cause being shown, the certificate may be cancelled.

**Land** (No. 24).—The Land Titles Act, consisting of 204 sections, provides for the registration and descent of land, its transfer, leasing, and mortgaging. "Land" means: lands, messuages, tenements, and hereditaments, corporeal and incorporeal, of every nature and description, and every estate or interest therein, and whether such estate or interest is legal or equitable, together with all paths, passages, ways, water-courses, liberties, privileges, and easements, mines, minerals, and quarries appertaining thereto, and all trees and timber thereon and thereunder lying or being. In this province land descends to the personal representative as personal estate, and is distributed as such. Illegitimate children inherit from the mother as if they were legitimate, and the mother inherits the land of her intestate illegitimate offspring. If either parent leave the other and thereafter live in adultery, such party can take no land of the other. Leases for more than three years of land for which a certificate of title has been granted must be in the form scheduled to the Act. Mortgages for certificated land must also be in the form scheduled to the Act. The covenants in the statutory form of lease by the covenant are, (1) that he will not assign or sub-let without leave, (2) will fence, (3) will cultivate, (4) will not cut timber, (5) will not carry on an offensive trade. The covenants in the statutory mortgage include, (1) that the mortgagee has a good title, (2) a right to mortgage, (3) in default the mortgagee shall have quiet possession, (4) freedom from encumbrances, (5) will execute such further assurance of the land as may be required, (6) has done no act to encumber the land.

**Medicine and Dentistry** (Nos. 28, 29).—The first of these Acts creates a College of Physicians and Surgeons, and provides for the qualification, election, and registration of its members. The second Act similarly creates a College of Dental Surgeons. Only members of these colleges are entitled to practise these professions in the province.

**Railways** (No. 30).—The Railway Act, consisting of two hundred and twenty-five sections, applies to all railways hereafter authorised



to be constructed by any special Act of this province, so far as it is incorporated in such special Act. This Act is similar in many respects to the Railway Clauses Act of the United Kingdom.

**Municipal Trading** (No. 34).—The Municipal Public Works Acts empower the corporation of any city or town to construct and maintain waterworks and sewers and gasworks.

**Free Libraries** (No. 37).—The Public Libraries Act enables local authorities to establish free libraries if at least three-fifths of the electors of the locality voting so desire.

**Dairy Produce** (No. 39).—The Dairymen Act provides for the incorporation of five or more persons into an association for the manufacture of butter and cheese, and of cold storage used in connection therewith.

**Motor Traffic** (No. 44).—Under this Act owners of motors must be registered and the vehicle must exhibit on it a number. The speed of motors in towns is limited to ten miles an hour and elsewhere to twenty miles an hour. The owner of the motor is responsible for any breach of this Act.

**Statute Law Revision** (No. 45).—The Revised Statutes Act provides for the issue of a commission for the revision and consolidation of the Ordinances of the North-West Territories and their issue in the form of Statutes for this new province.

**1907** Acts passed—49, of which 17 are classed as Local or Private.

**Interpretation Act** (No. 4).—This Act provides rules of construction of Acts and for the interpretation of words used therein. The Law is considered as always speaking, and whenever any matter or thing is expressed in the present tense the same shall be applied to the circumstances as they arise, so that effect may be given to each Act and every part thereof according to its spirit, true intent, and meaning. Every Act and every provision thereof shall be deemed remedial, and is to receive such fair, large, and liberal construction and interpretation as will ensure the attainment of the object of the Act. The terms interpreted are more numerous than in the Imperial Interpretation Act. (*d*) This Act also provides as to amendments and repeal of Acts and the effect thereof.

**Elections.**—No. 5 gives the procedure to be followed in the case of controverted elections. It is by petition to the High Court of the province, and trial thereby.

**Public Funds** (No. 6).—Defines the duties of the Treasury Department and the auditing of public accounts. All expenditure of public funds has to be by cheque countersigned by the Provincial Auditor,

(*d*) 52 & 53 Vict. c. 63.

who has to report to the Lieutenant-Governor in Council any case of expenditure which has no legislative or executive authority.

**Supreme Court.**—No. 8 establishes a Supreme Court for the province. The Court consists of a Chief Justice and four other judges. The jurisdiction of the Court is, in addition to the jurisdiction which the Supreme Court of the North-West Territories had before this Act, the jurisdiction which in England prior to the Supreme Court of Jurisdiction Act, 1873, (*e*) was vested in or exercisable by the High Court of Chancery, the Queen's Bench, Common Pleas, Exchequer, Probate, and Assize Courts. The procedure and practice are determined by the Act and by rules of Court made from time to time under the Act. In the absence of special provision it is to be exercised as nearly as may be as was exercised in the High Court of England on January 1, 1898. In civil cases trial is by a single judge without a jury, but one may be demanded in action for libel, slander, crim. con., seduction, malicious arrest or prosecution or false imprisonment, action of tort over \$500 and in debt or contract for over \$1000. In any case a judge has the discretion of ordering trial by jury.

**District Courts.**—No. 9 divides the province into eight judicial districts and establishes a District Court of Law and Records for each district. The original jurisdiction of these Courts is—

- (1) Personal action in contract or tort under \$300.
- (2) Action against the sheriff or officer of the district council for non-feasance or mal-feasance in connection with any matter in the Court when amount claimed is under \$300.
- (3) Actions of replevin under \$300. It has no jurisdiction in actions in which title to land is in question, wills, malicious prosecution, libel, slander, etc., actions against a justice of the peace for acts done in the execution of his office, except by consent.

**Surrogate Courts (No. 10).**—Each district has a Surrogate Court. The District Judge is the judge thereof. Its jurisdiction comprises the grant of letters of administration and probate, and the decision of all disputes in testamentary litigation. An appeal lies to the Supreme Court.

**Trial by Jury (No. 11).**—Defines the qualification of jurors as males between twenty-one and sixty who are natural-born or naturalised subjects of the King. There are seventeen exceptions to this rule. A jury consists of twelve, but ten may return a verdict. The jury are paid conduct money and each receives \$1 a day if he resides within two miles of the place of trial; otherwise \$2 a day. The jury are not to be kept without food while considering their verdict.



**Evidence.**—No. 12 is a code as to the taking of oral evidence and proof of documentary evidence.

**Police Courts** (No. 14).—The Lieutenant-Governor may appoint police magistrates for every city and incorporated town. Such magistrate must be a barrister of the Supreme Court, but holding this office does not prevent his practising before any Court not a police Court.

**Testamentary Disposition** (No. 15).—The Wills Act enables every person not an infant to devise by will real or personal property. Wills must be in writing executed by testator and attested by two or more witnesses in his presence, but no form of attestation is necessary. There are various provisions as to revocation and alteration, operation and construction of wills, amongst which it is provided that a devise or bequest by a testatrix to or for her issue or children does not debar an illegitimate child from taking.

**Intestacy** (No. 16).—The Devolution of Estates Act regulates the distributing of intestate estates, real and personal. The widow takes one-third of real and personal property, the remainder goes to the issue in equal shares; failing these, then to the other lineal descendants, who take, if in the same degree, equally, otherwise according to right of representation. This distribution of the property of intestate married women is the same as in the case of husbands, but substituting for the word widow the word husband. Desertion coupled with subsequent adultery of husband or wife renders either incapable of inheriting from the other.

**Married Women** (No. 18).—The Married Woman's Property Act enables married women to hold property as a *femme sole*, free from debts of her husband, and gives her all legal remedies for the protection of her property, except that an action for tort cannot be brought between husband and wife, except in respect of rights in to or out of real and personal property. In certain cases a married woman may be given the earnings of her infant children.

**Legal Profession** (No. 19).—This Act incorporates the Law Society of the province, and prescribes as to the persons who may become entitled to practise in the Courts. The members are barristers and solicitors, and before admission swear to well and truly, and honestly demean themselves as barristers and solicitors according to the best of their knowledge, skill, and ability.

**Legal Profession** (No. 20).—Empowers the Lieutenant-Governor to make not more than two K.C.'s per annum or eight in any four years.

**Mechanics' Lien** (No. 21).—This gives certain workers a lien for wages and materials supplied, which on registration obtains priority over other liens.

**Corporations** (No. 22).—Banks, insurance, loan and joint stock companies are to pay annually certain special taxes specified in the Act.

**Education**.—Nos. 24 and 25 provide for the establishment and incorporation of a university for the province, and for the organisation and maintenance of secondary education.

**Wild Animals** (No. 28).—In certain declared districts a bounty of \$1 is given for killing a prairie wolf or wolf pup, and \$5 for killing an adult timber wolf.

## 10. NORTH-WEST TERRITORIES. (a)

**1898** *Ordinances for 1898*.—In 1898 the Revised Ordinances of the Territories, 1885, were amended and consolidated. They consist of ninety-three chapters and are divided into thirteen titles of classes. These revised Ordinances came into force on March 15, 1899.

No. 1 is an interpretation section.

**TITLE II**.—Nos. 2-20 deal with the legislative, executive, and general government.

**TITLE III**.—Nos. 21-36 relate to the administration of justice, the law of slander, limitation of actions, and arbitrations.

**TITLE IV**.—Nos. 37 and 38 deal with the law relating to real property.

**TITLE V**.—Nos. 39-45 are Ordinances respecting the sale of goods, factors and agents, choses in action, preferential assignments, mortgages and sales of personal property, hire receipts and conditional sales of goods, and the law of partnership.

**TITLE VI**.—Nos. 46-50 relate to marriages, married women's property, compensation to the families of persons killed by accidents, insurance for the benefit of wife and children, masters and servants.

**TITLE VII**.—Nos. 51-60 are Ordinances relating to professions and trades, liens in favour of mechanics, and threshers' liens.

**TITLE VIII**.—Nos. 61-69 deal with the incorporation and regulation of joint stock companies and kindred institutions.

**TITLE IX**.—Nos. 70-75 are Ordinances respecting municipalities, the assessment of railways, villages, local improvement, schools, and irrigation districts.

(a) Contributed by H. Stuart Moore, Esq. An edition including all the Ordinances of public general utility in force on September 1, 1905, was published in 1907.



**TITLE X.**—Nos. 76–85 relate to agriculture, stock, and the preservation of game.

**TITLE XI.** (Nos. 86–88).—These Ordinances deal with the pollution of running streams, prevention of prairie and forest fires, and the construction of chimneys.

**TITLE XII.**—No. 89 regulates the sale of intoxicating liquors.

**TITLE XIII.**—No. 90 empowers a justice of the peace to incarcerate a person suspected of being insane.

No. 91 forbids work and the playing of games in public, or hunting on Sundays.

No. 92 makes it a punishable offence to supply a person under sixteen years of age with tobacco.

## 1899

### Ordinances passed—31.

**Coal-Mines.**—No. 4 amends the Coal-Mines Regulation Ordinance by restricting the time for any person to work in a coal-mine to eight hours a day, and forbids the employment of boys under twelve years of age and women in the workings of any coal-mine.

**Partnerships** (No. 7).—This Ordinance contains all the provisions of the Partnership Act, 1890, (*b*) of the United Kingdom, with such modifications as are necessary for the effective working of the Act within the Territories. It also contains special provisions as to limited partnerships, their registration, liability, and dissolution.

**Company Law** (No. 12). (*c*)—This Ordinance furnishes the machinery and procedure to be followed in the winding-up of joint stock companies.

**Agriculture** (No. 14).—This Ordinance provides for the organisation and encouragement by money grants and otherwise of agricultural societies whose objects are to encourage improvements in agriculture, horticulture, arboriculture, manufactures, and useful arts.

## 1900

### Ordinances passed—45.

**Debtors.**—No. 11 provides that no assignment for the general benefit of creditors can be valid unless made to some person residing in the judicial district within which the assignor resides or carries on business.

**Employers' Liability.**—No. 13 amends the Workmen's Compensation Ordinance by enacting that the negligence of a fellow-workman cannot be pleaded as a good defence in any action brought against an employer.

**Insurance** (No. 20). (*d*)—The Mutual Hail Insurance Ordinance empowers the Lieutenant-Governor in Council to grant charters to

(*b*) 53 & 54 Vict. c. 39.

(*c*) Repealed by No. 20 of 1901, *infra*, p. 360.

(*d*) Repealed by No. 9 of 1901, *infra*, p. 359.

companies formed in accordance with the provisions of this Ordinance for the purpose of mutual insurance against damage by hail, tornadoes, cyclones, and hurricanes. The Ordinance provides for the general management and supervision of the chartered companies.

**Canadian Troops** (No. 24).—This is a similar enactment to New Brunswick Act, 1900, No. 11. (*e*)

**Villages.**—No. 25 (*f*) empowers the Commissioner of Public Works, when satisfied that any portion of the Territories comprising an area not greater than six hundred and forty acres (no part of which is within the municipalities) contains not less than fifteen dwelling-houses, to give notice that it is proposed to establish such place as a village, and after thirty days the Lieutenant-Governor may by Order in Council declare such place a village and fix a day for the election of an overseer. The Ordinance further provides for the election of the overseer, meetings of ratepayers, assessment and taxation, the prevention of disease, and fire. The overseer's remuneration is not to exceed \$100 and 2½ per cent. of all taxes collected by him.

## 1901

### Ordinances passed—43.

**Interpretation.**—No. 2 amends the Interpretation Ordinance by inserting after "Arbour Day" "the 24th day of May, or when such day falls on a Sunday, the 25th day of May, to be known as 'Victoria Day.'"

**Public Works.**—No. 4 creates a Department of Public Works which is to have the management of Government buildings, public highways, and ferries. Lands required for the public service can be taken after proper compensation.

**Boiler Explosions** (No. 7).—Inspectors are to be appointed by the Lieutenant-Governor in Council to inspect once a year at least every boiler other than railway and steamboat boilers, or boilers used for heating water for domestic purposes. No person is permitted to operate on a steam boiler without holding a certificate of competency granted in accordance with the provisions of this Ordinance.

**Insurance** (No. 9).—The Hail Insurance Ordinance empowers the Territorial Treasurer or other appointed officer of the Executive Council to insure crops from damage by hail at the rate of \$4 per acre.

This Ordinance is in direct conflict with No. 20 of the Ordinance of 1900, (*g*) and that Ordinance is therefore repealed, and insurance companies are prohibited from effecting insurance against damage by hail.

(*e*) See *supra*, p. 248.

(*f*) Repealed by No. 25 of 1901, *infra*, p. 360.

(*g*) See *supra*, p. 358.



**Intestates' Estates (No. 13).**—This Ordinance amends the law relating to the devolution of the property of intestates. It gives to the widow the whole estate of the husband if he dies without issue. In the case of the death of a person without leaving a wife, child, or father, the mother takes the whole estate. In the distribution of personal property of a woman her illegitimate children are entitled to the same rights as if they were legitimate, and on the death of an illegitimate child without issue the mother is entitled to the personal property.

**Companies (No. 20).**—This Ordinance repeals all the previous Ordinances (*h*) relating to company law and provides a code for the constitution, incorporation, registration, and general management of all associations or partnerships consisting of more than twenty persons which carry on business within the Territories.

**Villages (No. 25).**—This Ordinance repeals No. 25 of 1900, (*i*) but re-enacts its provisions in a more detailed and workable form.

**Districts.**—No. 27 provides for the constitution of any portions of the Territories not contained within the limits of a municipality or organised village into a district. The Ordinance provides for its administration and management by an overseer to be elected annually by the ratepayers.

**Education.**—No. 29 consolidates and amends the law relating to the management and attendance at schools.

## 1902

### Ordinances passed—25.

**Legislators.**—No. 2 forbids members of the Assembly to be contractors with the Government under a penalty of \$500.

**Public Health.**—No. 4 provides for the care and isolation of persons having any infectious or contagious disease. On every door of every house where there is a person with a contagious disease, a notice must be affixed. All cases of tuberculosis must be reported by the medical practitioner in attendance, and the houses which contain such patients must be properly disinfected.

**Wild Birds' Protection.**—No. 11 is for the protection of useful birds. No person may hunt or kill any birds whatsoever except crows, eagles, goshawks, pigeon hawks, duck hawks, cooper's hawks, hawk owls, blackbirds, cow-birds, grackles, English sparrows, loons, cormorants, pelicans, mergansers, and such birds as are dealt with in the Game Ordinances. With the permission of the Commissioner of Agriculture a yearly licence to procure birds for scientific purposes may be obtained.

(*h*) Including No. 12 of 1899, *supra*, p. 358.

(*i*) See *supra*, p. 359.

1903

Session 1 : Ordinances passed—44.

**Land Drainage.**—No. 6 empowers the Government to construct and maintain ditches for the improvement of roads. The cost of the ditch is to be paid by every road and parcel of land benefited by the drainage.

**Company Legislation.**—No. 13 provides machinery for the voluntary or compulsory winding up of companies. Its procedure is very similar to that in force in the United Kingdom. The assets of a company are to be applied first in satisfying the wages due for three months previous to the liquidation to employees other than directors of the company, and then in satisfaction of the residue of wages owing and all other liabilities *pari passu*.

No. 14 requires that foreign companies which carry on business in the province for gain must be registered, otherwise they are to have no right of action for the enforcement of their contracts. This Ordinance does not apply to companies which have no resident agent or representative and no warehouse, office, or place of business.

No. 15 relates to trust companies for executing the office of executor, trustee, guardian, etc. The Court may at any time order the investigation of the affairs of such companies.

**Insurance.**—No. 16 makes various changes in the law relating to insurance against fire. There are twenty-one statutory conditions which are deemed part of every fire policy. Variations of these conditions can only be enforced by an insurance company if a Court of law holds them to be just and reasonable.

**Agriculture.**—No. 24 declares that certain weeds are “noxious,” and enacts that every owner of land, whether cultivated or not, must promptly destroy all noxious weeds when ordered by any inspector appointed under this Ordinance. If he fails to obey the orders of the inspector, he is liable to a fine of \$100 and the cost of carrying out the order.

1903

Session 2 : Ordinances passed—35.

**Legislative Assembly.**—No. 2 amends the Ordinances relating to the Legislative Assembly. It enacts that any male British subject by birth or naturalisation (other than unenfranchised Indians) who are of full age, and have resided in the Province for twelve months, and in their electoral district for three months, may vote at elections. Any male British subject by birth or naturalisation may be elected to the Legislative Assembly. Ministers on changing offices are not required to seek re-election.



**Taxation.**—No. 5 imposes succession duties on all estates which exceed \$5000 in value. Estates which do not exceed \$25,000 in value, and are left to the father, mother, brother, sister, husband, wife, child, grandchild, daughter-in-law, son-in-law of the deceased, or to any person adopted before the age of twelve years by the deceased, or to whom the deceased for not less than ten years before his death stood in the acknowledged relation of parent, are taxed by duties ranging from  $1\frac{1}{2}$  per cent. to 10 per cent., according to the value of the property and the relationship to the deceased. Estates exceeding \$25,000 are taxed for the excess at the rate of 5 per cent. Provisions are made for the assessment and collection of these duties.

**Easements.**—No. 7 amends the Ordinance respecting limitation of actions by providing that the right to the access and use of light or any easement, right in gross, or profit à prendre, shall not be acquired by prescription.

**Seduction and Illegitimacy.**—No. 8 provides that any unmarried female may maintain an action for seduction in her own name, and her father or mother may maintain such an action without proof of service. No. 9 makes the father of an illegitimate child under age liable for his necessities.

**Trusts.**—No. 11 regulates the administration of estates by trustees, executors, and administrators. Many of its sections are adapted from the Imperial Trustee Act, 1893. (k) Amongst other provisions, it enables a trustee to apply to the Supreme Court for advice in the management of the trust property, and if he acts on such opinion he is deemed to have discharged his duty, provided he has not been guilty of fraud or wilful concealment or misrepresentation. Every trustee is entitled to be remunerated out of the estate for his work. Such remuneration is fixed by the Supreme Court.

**Dentistry.**—No. 16 provides for the registration of dental surgeons, the formation of the College of Dental Surgeons and election of its members. Unregistered persons who practise for reward are debarred from recovering their charges and are liable to a penalty of \$100.

**Insurance.**—No. 21 permits of the formation of mutual fire insurance companies by thirty or more persons each having an insurable interest in property exposed to damage by fire.

**Agriculture.**—No. 28 enacts that an action shall not lie for damages caused by domestic animals unless the property damaged was surrounded by a lawful fence as defined by this Ordinance.

**Game.**—No. 29 amends the law as to the protection and capture of big game, game birds, and fur-bearing animals. It fixes the close seasons for the various classes, and entirely prohibits the use of traps

or snares for the capture of game birds. Non-residents are required to take out a licence. A general licence costs \$25, and a bird licence \$15. A guest staying with a resident can obtain a five-day licence to hunt with his host for \$1.

**1904**

## Ordinances passed—35.

**Master and Servant.**—No. 3 enacts that every engagement of personal services for a period exceeding one year must be in writing and signed by the contracting parties. Misconduct of a servant is punishable by a payment of \$30 or imprisonment for one month in default of payment. The master may be summoned before the justices for non-payment of wages or for improper dismissal of the servant. He can be ordered to pay the wages due, and in case of improper dismissal a sum equal to four weeks' wages. The Ordinance applies to contracts made both inside and outside the Province, and does not affect any civil or other remedies which the parties may have.

**Local Government.**—No. 8 amends the Ordinance respecting local government districts in various respects. It also enacts that to ensure the prompt payment of taxes, a ratepayer who pays his taxes before a certain date in each year is entitled to a rebate of 10 per cent. thereof.

**Liquor Traffic.**—No. 14 amends the Liquor Licence Ordinance on various points. Licensed hotels have to be provided with suitable fire-escapes. Inspectors appointed under the Ordinance on the application of the husband or wife, the father, mother, brother, or sister of such husband or wife, or the father, mother, brother, curator, guardian or employer of any person who has contracted the habit of drinking to excess, or of that person himself, can interdict him from the use of intoxicating liquors for one year, under a penalty of \$50.

**1905** A complete consolidation of the laws was made in 1905, and no legislation has been passed since.

## 11. YUKON TERRITORY. (a)

The Yukon Territory was cut off from the North-West Territories in 1898, (b) but the laws remained in force. The Commissioner in Council added various others, and the whole was consolidated in 1902.

(a) Contributed by C. E. A. Bedwell, Esq.

(b) Canadian Act 61 Vict. No. 6, *supra*, p. 169.



Naturally the legislation follows the same lines as that of the Territories. (c) The Ordinances have no short titles, and no distinction is made between public and private.

**1903**

## Ordinances passed—22.

**Licences.**—No. 11 requires auctioneers, hawkers, and pedlars to have a licence.

**Miners' Lien.**—No. 14 gives a miner a lien for work or wood upon the mine. The claim may be made upon the owner or "layman," who is defined to be "any person other than the owner who is working said mine or a part thereof for an interest or share of the minerals or ore produced therefrom."

**Yukon Territory Council.**—The committees and members of the Council are given by No. 15 the same privileges, immunities and powers as the members of the House of Commons of Canada.

**Dentistry.**—The Commissioner is required by No. 18 to appoint a Dental Board for the purpose of examining the qualifications of those who desire to practise in dentistry and dental surgery.

**Steam Boilers.**—Only licensed engineers are permitted to operate steam boilers of a greater capacity than fifteen-horse power. No. 19 sets forth the qualifications for a licence, which is only granted to applicants over twenty-one years of age.

**1904**

## Ordinances passed—19.

**King's Printer.**—No. 4 enacts the arrangements for the constitution of the office of the King's printer.

**Evidence.**—Public documents are provable in the same manner as from time to time in any Court in England. Provision is made by No. 5 generally to follow the lines of English procedure in all matters dealing with the production of documents, and also in regard to verbal evidence.

**Debts.**—The Collection Ordinance, as it is called, No. 6 provides for the collection of debts.

**Licensing Law.**—The law is strengthened by No. 8, which also requires the licensing of music halls.

**Taxation.**—Every person in the city of Dawson is required by No. 11 to pay a poll-tax of \$5.

**Dogs.**—Any dog worrying or destroying horses, sheep, pigs, or poultry elsewhere than on its owner's land may be killed by any person. No. 13 also authorises a justice of the peace to order any dog to be killed of whom complaint is made to that effect.

(c) See *supra*, p. 357.

**Elections.**—No. 17 amends the law as to the election of representatives to the Territorial Council, and No. 18 makes provision for voters' lists for the elections.

**1905**

## Ordinances passed—10.

**Juries.**—The exemptions and disqualifications for serving on juries as set forth in No. 1 seem to be so numerous as to suggest some difficulty in forming a jury. The payment is \$5 per day and 25 cents per mile for travelling expenses. Every one living more than fifteen miles from the Court House is exempt from attendance. The cost of the jury is to be borne by the Crown and litigants proportionately. The fine for non-attendance is \$5, recoverable by distress.

**Firearms.**—"No person shall discharge any firearms within the limits of any unincorporated town under a penalty of not more than twenty and not less than five dollars."—No. 3.

**Workers' Lien.**—No. 8 gives a lien for labour to woodmen.

**1906**

## Ordinances passed—14.

**Miners' Lien.**—No. 1 is similar in scope to No. 14 of 1903, (*d*) but does not specifically repeal it. A few amendments are made with the object of strengthening the position of the miner.

**Assessment.**—Various taxes are levied by No. 5, and a long list of fees payable for various licences which are required by trades of all kinds, including bakers and butchers.

**Constitutional Questions.**—The Commissioner is to refer constitutional questions to the Territorial Court in case of difficulty, and if the matter relates to the constitutional validity of any Ordinance. No. 6 also gives the Attorney-General of Canada the right to be heard. Adequate care is taken to safeguard other interests.

**Succession Duty.**—No. 8 enacts a scale of succession duty and provides for its collection.

**1907**

## Ordinances passed—14.

**Sale of Bread.**—No. 2 is much the same as the English law in regard to the sale of bread by weight, but it only applies to the city of Dawson.

**Road-houses.**—The object of No. 3 is to provide a means of escape in case of fire in "road-houses," which include "all buildings, whose owner, lessee or proprietor provides board or lodging for remuneration." A

(*d*) See *supra*, p. 364.



rope three-quarters of an inch in thickness and long enough to reach from the window to the ground is sufficient to comply with the requirements of the Ordinance.

**Constitution.**—The Council of the Territory may, by No. 4, sue and be sued in the name of the Commissioner, or, in his absence, the Acting Commissioner.

**Intoxicating Liquors.**—No. 9 makes a number of amendments in the licensing law and, *inter alia*, allows “no woman of loose, idle or suspicious character, or having no honourable occupation or calling (in which class and amongst whom are included dancing-girls, so-called artists and drink rustlers),” to be in any room on licensed premises.

**Prevention of Fire.**—Detailed building regulations are given in No. 10 so as to secure adequate safeguards against the heating arrangements being the cause of fire in villages where the inhabited buildings are not more than one hundred feet apart.

## II. NEWFOUNDLAND.

1898 (a)

Acts passed—47.

**Legislature.**—No. 1 makes various provisions relating to the internal economy of the Legislature. It provides that on dissolution of the Legislature the Speaker shall act until a Speaker is chosen by the new Legislature. It also provides for the appointment by the Governor in Council of various officials and a Commission of Internal Economy of the Legislature, to consist of the President and two members of the Legislative Council, and the Speaker and three members of the Executive Council who are members of the House of Assembly. Estimates of the sums required for salaries and other internal expenses are to be prepared annually by the clerk of the Legislative Council and the clerk of the House of Assembly, and submitted to the commission for approval, and when approved they are to be transmitted to the Receiver-General to be laid before the House of Assembly. The sums ultimately voted are paid to the order of and distributed by the commission.

**Seal Fishery.**—No. 2 provides a bounty not exceeding \$4 per registered ton for every registered vessel fitted out for and *bonâ fide* prosecuting the seal fishery in 1898.

**Department of Marine and Fisheries.**—No. 3 constitutes a Department of Marine and Fisheries, to be presided over by a Minister of Marine and Fisheries appointed by the Governor. An officer, to be called the Superintendent of Fisheries, is also provided for, who is to be the deputy head of the department. The functions of the department include the control of pilots and pilotage, beacons, buoys, and lighthouses, signals, harbours, piers, wharves, and St. John's dry dock, the classification of vessels and granting certificates to masters, etc., shipping masters and officers, and care of distressed seamen, ship-building and inspection of vessels, and the duties of Wreck Commissioners. The department is also entrusted with the administration of all laws relating to sea-coast and inland fisheries; and an annual report is to be submitted to the Governor, to be laid before both Houses of the Legislature. Provision is also made for the appointment by the

(a) Contributed by L. S. Bristowe, Esq.



Governor of a Fisheries Board, to consist of seven members, with the Minister of Marine and Fisheries as president. The functions of the board are to make inquiries as to the preservation and development of the fisheries and fishing trade. The Governor is also authorised to make regulations for the better management and regulation of the sea-coast and inland fisheries; and penalties are imposed on any one violating the Act or the regulations. Powers are also given to the Governor, on the recommendation of the Minister of Marine and Fisheries, to set apart and lease rivers or other waters for the natural or artificial propagation of fish.

**Seal Fishery.**—No. 4 provides for the close season for seals.

**Railways.**—No. 6 (*b*) confirms and gives effect to an agreement between the Governor and R. G. Reid for amalgamating several lines of railway into one system, and adding to them (the combined and extended railway to be called the Newfoundland Railway), and also for providing and subsidising an improved mail and steamship service for the Colony. The Act makes various provisions for the carrying out of the agreement and the working of the railway and steamships.

**S.S. "Greenland."**—No. 11 provides \$5500 for the relief of sufferers from the s.s. *Greenland* disaster.

**Revenue.**—No. 12 imposes customs duties on various imported goods, and allows drawbacks on exported tobacco, on paper used by printers, on exported biscuit, malt-liquors, and some other articles. Additional duties are also imposed on certain articles imported from particular places, but the clause may be suspended by proclamation.

**Customs.**—No. 13 (*c*) is a long Act of two hundred and sixty sections, providing machinery for the collection of customs duties and repealing chapter eight of the Consolidated Statutes.

**Stamps.**—No. 14 makes various provisions as to the preparation and design of stamps, and as to the payment of fees by stamps, and as to the stamping of instruments. An unstamped instrument is not to be acted on by the court or any other authority.

**Public Funds and Audits.**—No. 15 provides that all public moneys over which the Legislature has powers of appropriation shall form one consolidated revenue fund, to be appropriated for the public service of the Colony, as in the Act mentioned. The Governor is authorised to make regulations for the management of the public debt and payment of interest. Provision is also made as to the manner of raising loans, and powers are given to the Governor to change the form of any part of the funded debt (including debentures) by substituting one class of securities for another, and to raise temporary loans. The Governor is empowered to determine what officers are required to

(*b*) See *infra*, p. 376.

(*c*) See *infra*, p. 380.

collect and manage the revenue, and to assign to them their duties and salaries. Provision is also made for the appointment of an Auditor-General, with a staff of officers; and duties connected with the supervising and checking payments out of public moneys are assigned to him.

**Colonial Secretary and other Departments.**—No. 17 constitutes the following departments of the civil service—namely, the Department of the Colonial Secretary, the Department of Public Charities, and the Post Office Department, over which a Minister, to be called the Colonial Secretary, is to preside. Provision is also made for the appointment of a Deputy Colonial Secretary, a Commissioner of Public Charities, and a Postmaster-General, to be the deputy heads of the three above-named departments respectively. The functions of the Colonial Secretary include the control of education, elections and registration of voters, census, patents, copyrights and trade-marks, newspapers, public printing and stationery, weights and measures, licensing, and marriage.

**Department of Justice.**—No. 18 establishes a Department of Justice, to be presided over by the Minister of Justice, who is to be the Attorney-General of the Colony. Provision is made for the appointment of a Deputy Minister of Justice. The Minister of Justice is the legal adviser of the Governor and the Crown, and a member of the Executive Council, and superintends all matters relating to the administration of justice.

**Departments of Finance and Customs.**—No. 19 constitutes a Department of Finance and a Department of Customs, under the presidency of the Minister of Finance and Customs; and provision is made for the appointment of a deputy head of the Department of Finance and an assistant collector of customs to be deputy head of the Department of Customs. The Act also provides for the appointment of a Treasury Board, consisting of the Minister of Finance and Customs, the Minister of Justice, the Colonial Secretary, and another member of the Executive Council to be nominated by the Governor, who are to act as a committee of the Executive Council on all matters relating to finance, revenue, and expenditure or public accounts.

**Department of Agriculture and Mines.**—No. 20 constitutes a Department of Agriculture and Mines, to be presided over by the Minister of Agriculture and Mines, with a deputy, both being appointed by the Governor. The Minister of Agriculture and Mines has control of the Crown lands, and Ordinance, and Admiralty lands; geology and natural history; mines and minerals; timber lands, and lumber and pulp mills, and manufactories; the inspection of lumber; agriculture; the preservation of game and sheep; and immigration and emigration.

**Public Works.**—No. 21 constitutes a Department of Public Works,



under the presidency of the Minister of Public Works, with a deputy Minister (to be the chief engineer of the department), and a secretary and other officers. The Minister of Public Works has the management of the construction and repair of harbours, piers, roads, bridges, public buildings, and other public works; but he may not authorise expenditure not sanctioned by the Legislature except for necessary repairs and alterations.

**Sheriffs.**—No. 23 provides for the appointment by the Governor of one sheriff for each of the three judicial districts of the Colony, and for the appointment of deputy sheriffs.

**Banknotes.**—No. 28 prohibits the issue of less than five-dollar banknotes, or other instruments intended to circulate as money, except by leave of the Governor in Council.

**Local Affairs.**—No. 31 vests the control and management of sectional divisions of the Colony prescribed by proclamation of the Governor in elective boards, called divisional boards. Regulations as to the constitution and election of the boards are to be prescribed by the Governor. Provisions are made as to first and subsequent elections of the boards, the tenure of office, qualification of voters, the conduct of business, and so forth. The powers of the boards extend to roads, bridges, sewers, sanitation, removal of obstructions from highways, abatement of nuisances, and lighting of towns and settlements; and the Governor may commit the relief of the poor to them. The boards have large powers of making rules and regulations. The Act does not apply to the electoral district of St. John's.

**Agriculture.**—No. 33 provides a bonus of \$20 per acre for clearing and cultivating colonial land, and empowers the Governor to clear Crown lands for settlement, and to make rules as to the clearing of land.

**Cold Storage.**—No. 36 enables the Governor to guarantee payment of interest at five per cent. up to a capital of \$30,000 for any number of years not exceeding five, by any company engaged in cold storage or any other business connected with the fisheries of the Colony.

**Judicature.**—No. 37 abolishes the division of the legal year into terms. It also makes provisions as to the times for drawing grand and petty jury panels, and their terms of attendance; and in other respect amends the Judicature Act, 1889.

**Trustees.**—No. 38 is an Act corresponding to the Imperial Trustee Act, 1893, (*d*) and containing other provisions as to trustees and executors similar to those in certain other Imperial statutes. It defines the investments on which trust funds may be invested in the absence

(*d*) 56 & 57 Vict. c. 53.

of special provisions; and gives similar powers as to appointing new trustees, and vesting the trust property in them; and makes similar provisions as to the exercise of trusts and powers of sale, and as to the use of depreciatory conditions; and gives trustees similar powers of appointing agents, insuring renewing leases, and of giving receipts, and of compounding and settling debts, as are contained in the Imperial Act. It also includes provisions corresponding to those in the Law of Property and Trustee Relief Amendment Act, 1859, (e) as to notices for creditors by executors, and administration and distribution of assets; and enables any trustee, executor, or administrator to apply to the court by petition for the determination of any question relating to the management or administration of the trust property. It also contains powers to trustees for infants to apply the income for their maintenance similar to those in the Imperial Conveyancing and Law of Property Act, 1881, (f) and extends the Statutes of Limitations to trustees in like manner as is done by the Imperial Trustee Act, 1888. (g)

The Act gives to the Court the powers with respect to the appointment of new trustees and vesting orders as are contained in s. 25 and the following sections of the Trustee Act, 1893; and it also enables the interest of a beneficiary instigating or requesting a breach of trust to be impounded by the court as an indemnity.

**Perjury.**—No. 40 makes perjury or subornation of perjury a misdemeanour punishable by fine and fourteen years' imprisonment, and defines what constitutes perjury.

**Lunacy.**—No. 44 amends the Lunacy Act, 1897, by enabling a person alleged to be insane to be committed, by a justice of the peace, to gaol for a reasonable time, with a view to his being removed to a lunatic asylum after examination by a medical practitioner.

**Supreme Court.**—No. 47 provides that the Supreme Court shall be duly constituted, notwithstanding the absence of a judge, and also makes provision as to the tenure of office and salaries of the judges.

1899 (h)

Acts passed—38.

**Marine Court of Enquiry.**—No. 1 (i) gives power to a Marine Court of Enquiry, appointed under No. 116 of the Consolidated Statutes, 2nd Series, to inquire into the conduct of a master or other person in charge of a ship who fails to render assistance or otherwise conform to

(e) 22 & 23 Vict. c. 35.

(f) 44 & 45 Vict. c. 41.

(g) 51 & 52 Vict. c. 59.

(h) Contributed by L. S. Bristowe, Esq.

(i) Repealed by No. 4 of 1901, *infra*, p. 375.



the provisions of s. 422 of the Merchant Shipping Act, 1894, (*k*) in cases of collision; and in certain events to cancel or suspend the certificate of the master, mate, or engineer.

**Sale of Goods.**—No. 2 codifies the law relating to the sale of goods. The Act is divided into six parts. Part i. deals with the formation of the contracts, including provisions as to the formalities and subject-matter of the contracts, conditions, and warranties, and sale by sample. Part ii. relates to the effects of the contract, including the transfer of property and the transfer of title. Part iii. deals with the performance of the contract, and part iv. with the rights of an unpaid seller against the goods, including vendor's lien and stoppage *in transitu* and re-sale. Part v. prescribes the remedies of seller and buyer for breach of the contract. Part vi. contains supplementary provisions as to sales by auction.

**Lodgers' Goods Protection.**—No. 4 is an Act to protect the goods of lodgers against distresses for rent due to the superior landlord. It is substantially the same as the Imperial Lodgers' Goods Protection Act, 1871. (*l*)

**Crown Lands.**—No. 5 provides for the surveying of lands thereafter applied for for any purpose, and for payment within a year of fees payable to the Crown in respect thereof. It amends No. 13 of the Consolidated Statutes (2nd Series) of Crown Lands, Timber, Mines, and Minerals, and contains new provisions as to licences to cut timber on ungranted Crown lands in substitution for s. 59 of that Act. It also contains a series of new provisions as to the grant of mining leases from the Crown in substitution for s. 63 of the same Act, as amended by 60 Vict. No. 4, and a number of other alterations of details in the same Act.

**Cash Notes.**—No. 6 authorises the issue of cash notes to be applied by the various road boards in payment for labour, materials, and other obligations. The notes are made legal tender, and are payable on presentation at the office of the Department of Public Works at St. John's.

**Companies.**—No. 10 (*m*) is a long Act of two hundred and forty-three sections, dealing with the whole law of the formation and winding up of joint stock companies. It incorporates the following Imperial Statutes—namely, the Companies Acts, 1862, (*n*) 1867, (*o*) 1877, (*p*) 1880, (*q*) and 1898, (*r*) the Joint Stock Companies' Arrangement Act, 1870, (*s*) the

(*k*) 57 & 58 Vict. c. 60.

(*m*) See *infra*, pp. 374, 382, 385.

(*o*) 30 & 31 Vict. c. 131.

(*q*) 43 & 44 Vict. c. 19.

(*l*) 34 & 35 Vict. c. 79.

(*n*) 25 & 26 Vict. c. 89.

(*p*) 40 & 41 Vict. c. 26.

(*r*) 61 & 62 Vict. c. 26.

(*s*) 33 & 34 Vict. c. 104.

Preferential Payments in Bankruptcy Acts, 1888 (*t*) and 1897 (*u*) (so far as relates to companies), the Companies Winding Up Act, 1890, (*w*) the Companies (Memorandum of Association Act) 1890, (*y*) and the Directors' Liability Act, 1890. (*z*) There are a few variations, including a provision that the memorandum of association shall only require to be signed by three persons.

**Extradition.**—No. 11 makes provisions for the extradition of fugitive criminals in cases to which the Imperial Extradition Acts, 1870 (*a*) and 1873, (*b*) apply.

**Accidents.**—No. 12 requires notice of accidents in making, working, or repairing railways, gasworks, electric works, canals, bridges, harbours, factories, mines, scaffolding for buildings, or in the working of traction or other engines in the open air, to be given by the employer to a stipendiary magistrate, who must report it to the Minister of Justice. The Minister of Justice may order an investigation to be made into the accident, if it involves loss of life or bodily injury.

**Boiler Inspection.**—No. 14 provides for the appointment of an inspector to report on marine, factory, foundry, locomotive, and other boilers, the inspector being placed under the control of the Minister of Marine and Fisheries. The Governor in Council is authorised to make regulations as to the inspection of boilers, and the inspectors are given large powers of entry. If on inspection a boiler is found in good condition, a certificate to that effect, extending over a limited period, is given. When a boiler is found to be defective, it is condemned, or repairs ordered, and penalties are imposed for using a boiler condemned or ordered to be repaired, or after the expiration or cancellation of the certificate.

**Barristers and Solicitors.**—No. 16 amends No. 54 of the Consolidated Statutes (2nd Series) relating to the Law Society, barristers and solicitors by providing for the suspension, by the Law Society, of barristers and solicitors guilty of unprofessional conduct, a right of appeal being given to the Supreme Court. The Act makes divers other alterations of detail.

**Sealers.**—No. 17 provides that a sealer shall not be liable for goods or cash advanced to him to be paid for out of the proceeds of a sealing voyage to any greater amount than his share of the proceeds of the voyage.

**Deer.**—No. 18 prohibits the hunting or killing of moose or elk before June 1, 1906. It also provides a close season for caribou, and makes a licence necessary for killing more than three stag and one doe caribou.

(*t*) 51 & 52 Vict. c. 62.

(*u*) 60 & 61 Vict. c. 19.

(*x*) 53 & 54 Vict. c. 63.

(*y*) *Ibid.*, c. 62.

(*z*) *Ibid.*, c. 64.

(*a*) 33 & 34 Vict. c. 52.

(*b*) 36 & 37 Vict. c. 60.



**Light Dues.**—No. 19 provides for dues to be paid by vessels entering ports of the Colony, other than sealing, coasting, or fishing vessels owned and registered in the Colony.

**Advances for Public Works, etc.**—No. 20 enables the Governor in Council to authorise relieving officers, chairmen of local boards, etc., to make advances out of public moneys against an agreement to give work or service or materials. Persons neglecting to give such work, service, or materials are liable to prosecution.

**Education.**—No. 24 (*c*) amends the Education Act, 1895, by appointing assistant superintendents, making an additional appropriation for school inspection, and as to boards of education in Church of England, Roman Catholic, and Methodist districts.

**Lost Debentures.**—No. 26 enables the Governor in Council to pay debentures lost or destroyed within the meaning of 58 Vict., No. 24, where such debentures have matured or become payable or been called in for payment.

**Agriculture.**—No. 33 authorises the raising of \$100,000 to be expended in bonuses for clearing and cultivating land.

**Audits.**—No. 34 consolidates into one Consolidated Revenue Fund all public moneys and revenue over which the Colonial Legislature has the power of appropriation, and makes provision for the appropriation of such revenue to the various departments of the public service of the Colony. It also provides for the way in which loans authorised by the Legislature shall be raised, and enables temporary loans to be raised, and provides for the division of the Colony into districts for revenue purposes. It also provides for the appointment of a Comptroller and Auditor-General for the audits of departmental accounts.

## 1900 (*d*)

## Acts passed—11.

**Crown Grants.**—No. 2 amends No. 61 of the Consolidated Statutes (2nd Series) by providing that the grantee of a Crown grant is not to be compelled to expend money during proceedings respecting title, and that the Governor in Council may issue a new grant after judgment in proceedings respecting title.

**Companies.**—No. 3 amends the Companies Act, 1899, (*e*) by enabling companies previously incorporated to be registered under the Act, and by providing for the registration without the use of the word "limited" of associations for the promotion of commerce, art, science, religion, or charity and not for gain.

**Summary Jurisdiction.**—No. 6 (*f*) amends the law of summary

(*c*) Repealed by No. 10 of 1903, *infra*, p. 378.

(*d*) Contributed by L. S. Bristowe, Esq.

(*e*) See *supra*, p. 372.

(*f*) Repealed by No. 5 of 1901, *infra*, p. 375.

jurisdiction by providing that a stipendiary magistrate sitting alone or with one or more justices of the peace shall be a Court of summary jurisdiction within the Imperial Summary Jurisdiction Act, 1879, (g) and enabling the Court, with the consent of the Minister of Justice and the prisoner, to deal summarily with certain offences, with power to imprison for a year or inflict a fine up to \$200.

**Aliens.**—No. 7 enables aliens to hold lands and property in the same manner as a natural-born British subject.

## 1901 (h)

## Acts passed—21.

**Revenue.**—No. 2 imposes duties on various imported goods. The articles rendered liable to duty, comprising both raw materials and manufactured, are enumerated in Schedule A to the Act under one hundred and fifty-five heads. Schedule B contains a list of exemptions. Schedule C contains a list of goods the importation of which is prohibited, and which comprise seditious and immoral drawings or publications, counterfeit coin, goods manufactured by prison labour, reprints of publications copyrighted in Newfoundland, and tea so adulterated as to be unfit for use. Schedule D contains a list of excisable articles.

**Marine Court of Enquiry.**—No. 4 empowers the Governor in Council, whenever a shipping casualty (defined by s. 1) occurs, or whenever a charge of incompetency or misconduct on the part of masters, mates, or engineers of ships requires to be inquired into, to appoint a stipendiary magistrate or barrister of ten years' standing to be a Marine Court of Enquiry to make an investigation into the same. An inquiry into a shipping casualty is required to be conducted with assessors. The Court has power in certain circumstances to suspend the certificate of a master, mate, or engineer, and a report of the enquiry is in every case required to be sent to the Governor for transmission to the Board of Trade, and the Board of Trade may order a rehearing. The Act also empowers the Governor in Council to appoint marine inspectors, and repeals No. 116 of the Consolidated Statutes (2nd Series) and 62 & 63 Vict. No. 1, (i) relating to Marine Courts of Enquiry.

**Quarter Sessions.**—No. 5 repeals 63 Vict., No. 6, (k) entitled "An Act to Amend the Law relating to the Summary Jurisdiction of Magistrates." The Act abolishes Courts of Quarter Sessions and vests their appellate jurisdiction (except where otherwise provided) in the Supreme Court, and their jurisdiction in cases without a jury in a stipendiary magistrate; with or without other justices of the peace, or in two justices of the peace, with a right of appeal to the Supreme Court, and

(g) 42 & 43 Vict. c. 49.

(i) See *supra*, p. 371.

(h) Contributed by L. S. Bristowe, Esq.

(k) See *supra*, p. 374.



also gives them power to try summarily without a jury various criminal offences.

**Newfoundland Railway.**—No. 6 amends the Newfoundland Railway Act, 1898, (*l*) and enacts a number of provisions relative to the establishment and working of the Newfoundland Railway.

**Real and Personal Property Convention.**—No. 9 provides for the fulfilment of the terms of a convention between the Imperial Government and the United States as to the disposal of real and personal property.

**Oaths.**—No. 10 makes an oath binding if taken in any form which the person taking the oath declares to be binding, and provides for an affirmation being substituted for an oath where a person has no religious belief, or where the taking of an oath is contrary to his religious belief.

**Elections.**—No. 12 amends the Election Act, 1889, by providing that election petitions shall be tried by two judges, and that corrupt practices of a trivial character committed without the candidate's knowledge shall not avoid the election.

**Inflammable Oils, etc.**—No. 14 places restrictions on the keeping of gasoline, liquid acetylene, and carbide of calcium.

**Beavers and Foxes.**—No. 15 provides a close time for beavers and foxes.

## 1902 (*m*)

Acts passed—29.

**Registration of Deeds.**—No. 3 amends No. 80 of the Consolidated Statutes as regards the proof of deeds executed out of the Colony, and provides a mode of proof for deeds in certain cases where the witnesses and parties are incapable of proving them.

**Warehouse Receipts.**—No. 5 is an Act amending the law respecting warehouse receipts, bills of lading, and other securities in the possession of banks. It provides that certain specified banks may lend money on the security of agricultural produce, minerals, standing timber, and produce of the sea, and gives them a power of sale on non-payment subject to notice to the pledgor. No security can be given under this Act in respect of a past liability. In certain cases the claim of a bank in respect of securities under this Act is made preferential, but the banks are postponed to unpaid vendors with a lien, unless they acquired the security without notice of the lien. False statements in securities, and the wrongful alienation of goods pledged under this Act are made misdemeanours.

(*l*) See *supra*, p. 368.

(*m*) Contributed by H. C. Gutteridge, Esq.

**Whaling Industry.**—No. 11 (*n*) provides that no person shall engage in this industry without a licence. The holder of a licence is debarred from using more than one steamer, and from employing "tow boats." Rules are also laid down as to the manner of killing whales, and whaling in the neighbourhood of fishing boats is prohibited. The Act also provides that no foreign workmen shall be employed in this industry.

**Foreign-built Vessels.**—No. 13 places an *ad valorem* duty of 5 per cent. on foreign-built vessels applying for registry in the Colony. An exception is made in the case of such vessels as shall be continuously employed in connection with the trade or fisheries of the Colony.

**Bog Lands.**—No. 15 empowers the Governor in Council to lease such unappropriated Crown lands as are declared to be bog lands.

**Deer.**—No. 16 (*o*) prohibits the hunting of moose or elk before January 1, 1912, and the hunting of caribou from February 1st to July 31st in any year. Not more than two stag and one doe caribou may be killed without a licence, and the export of more than three carcasses, heads, or antlers of stag caribou is prohibited. This Act also makes certain methods of hunting unlawful.

**Game.**—No. 17 fixes a close time from January 12th till August 20th for migratory birds.

**Education.**—No. 18 (*p*) amends the Education Act, 1895, by making additional appropriations for bonuses to teachers, and also for industrial education. It deals with the appointment of superintendents of education chosen from the different denominations, and defines the Salvation Army educational districts.

**Sale of Tobacco to Juveniles.**—No. 19 prohibits the sale of tobacco to juveniles apparently under fifteen years of age. It also provides for the punishment of persons acting as agents to procure tobacco for juveniles, and of juveniles refusing to account for tobacco found in their possession. The justices can dismiss a charge under this Act against a juvenile, if satisfied that the Act complained of was done *bonâ fide* at the request of a parent or guardian.

**Public Libraries.**—No. 20 establishes Public Library Boards whose duty it is to organise circulating and travelling libraries in all parts of the Colony and Labrador.

**Intestacy.**—No. 21 provides that when an American citizen dies intestate in the Colony, notice of his death is to be given to the United States Consul at St. John's, so as to enable the latter to act as interim administrator.

**Employers' Liability.**—No. 22 amends No. 87 of the Consolidated Statutes. It voids all agreements entered into by workmen for the

(*n*) See *infra*, p. 378.

(*o*) See *infra*, p. 380.

(*p*) Repealed by No. 10 of 1903, *infra*, p. 378.



purpose of contracting themselves out of the principal Act. It also defines the liability of an employer for the acts of his sub-contractor. S. 2 and s. 7, sub-s. 2, of the Imperial Workmen's Compensation Act, 1897, (*q*) are incorporated in this Act.

**Revenue.**—No. 26 imposes an import duty of three cents per pound on rough undressed leather when imported by tanners for further dressing.

No. 27 reduces the import duty on port wine by one-half in view of the admission of Newfoundland fish into Portugal at the same rate of duty as Norwegian fish.

### 1903 (*r*)

Acts passed—18.

**Seal Fishery.**—No. 2 imposes a penalty on the landing of carcasses of seals from steamers or vessels which have not cleared for the seal fishery from a port in the Colony.

**Whaling Industry.**—No. 3 (*s*) provides a penalty for the employment in the whaling industry of persons not British subjects domiciled in the Colony for at least two years.

**Foreign Enlistment.**—No. 4 prohibits the export of certain munitions of war.

**Empire Day.**—No. 5 establishes an Empire Day (May 24th) in each year, which is to be a public and bank holiday, and also a non-business day.

**Crown Lands.**—No. 6 authorises the Governor in Council to issue licences of occupation or leases of Crown lands, lakes, rivers, etc., for the purpose of quarrying, mining, cutting timber, manufacturing paper pulp, driving machinery, etc.

**Bounties.**—No. 7 empowers the Governor in Council to authorise the payment of bounties on pig iron, puddled iron, bars, and steel billets made in the Colony.

**Education.**—No. 10 (*t*) establishes Boards of Education for the Church of England, Roman Catholic, Methodist, Presbyterian, and Congregational denominations, also Church of England, Presbyterian, Methodist, and Roman Catholic colleges for higher education. The supreme educational authority is to be a board nominated by the Governor in Council and known as the Higher Council of Education.

**Insurance.**—No. 11, an Act which is retrospective, introduces important changes into the law of life and accident insurance. It defines an "accident" as "any bodily injury occasioned by external force or agency, and either happening without the direct intent of the person injured or

(*q*) 60 & 61 Vict. c. 37.

(*s*) See *supra*, p. 377.

(*r*) Contributed by H. C. Gutteridge, Esq.

(*t*) See *supra*, p. 374, and *infra*, p. 385.

happening as the indirect result of his intentional act, such act not amounting to voluntary or negligent exposure to unnecessary danger." The Act further provides that statements made prior to the execution of policies shall be of no effect unless they are material, notwithstanding any proviso to the contrary contained in any policy.

**1904** (*u*)

## Acts passed—20.

**Supreme Court.**—No. 3, intituled "The Judicature Act, 1904," consolidates the laws relating to the constitution, powers, and procedure of the Supreme Court, and is practically a re-enactment of No. 50 of the Consolidated Statutes (Second Series) and the Newfoundland Judicature Act, 1889. It is divided into nine parts, with a schedule containing the rules and an appendix of forms. It brings the procedure of the Newfoundland Supreme Court, *mutatis mutandis*, substantially into line with the procedure of the Supreme Court of Judicature in England.

**Shipping.**—No. 8 (*x*) provides for the examination of and granting of certificates of competency to marine engineers.

**Foreign Marriages.**—No. 9 gives effect in the Colony to the Foreign Marriages Order in Council, 1903. (*y*) In every case of a marriage under the Foreign Marriages Act, 1892, (*z*) one of the parties who has resided for at least three consecutive weeks in the Colony must give the notice required by the Act to an official known as the Marriage Registrar. After this notice has been advertised in two consecutive issues of the *Royal Gazette* the Marriage Registrar (unless he is aware of an impediment) must grant a certificate to the effect that the notice has been duly given and published.

**Game.**—No. 11 amends the law relating to the preservation of game by establishing a close time for ptarmigan and partridge between January 12th and October 1st in each year.

**Timber.**—No. 13 allows the transportation of timber over all streams and lakes within the Colony. It also deals with the curious situation created by the celebrated Reid contracts, and enacts that the title to highways on the lands of the Newfoundland-Reid Company shall vest in the Crown as and when an actual survey of such lands is made.

**Post Office.**—No. 14 vests the control of the telegraphs and telephones in Newfoundland in the Postmaster-General of the Colony. This Act has also been rendered necessary by the Reid contracts, which placed the telegraphic system of the Colony under the control of private concessionaires.

(*u*) Contributed by H. C. Gutteridge, Esq.

(*x*) Repealed by No. 24 of 1906, *infra*, p. 384.

(*y*) See Stat. R. & O. Rev., 1904, vol. 8, Marriage, p. 45.

(*z*) 55 & 56 Vict. c. 23.



**Deer.**—No. 15 amends the Deer Preservation Act, 1902. (a) It prohibits the canning of caribou meat, and also forbids the sale of venison or caribou meat between January 1st and July 31st.

**Customs.**—No. 16 amends the Customs Act, 1898, (b) by empowering the Minister of Finance and Customs to confiscate and sell imports invoiced at less than their market value.

## 1905 (c)

Acts passed—23.

**Trust Funds.**—No. 3 is an Act passed to give effect to the provisions of the Imperial Statute (the Colonial Stock Act, 1900) (d) so as to enable trust investments to be made in securities of the Colony. It provides for the payment out of the colonial revenues of sums payable to stockholders under a judgment, decree, or order of a Court of the United Kingdom. It also records the opinion of the Colonial Legislature to the effect that any subsequent statute which appears to the Imperial Government to injuriously affect such securities would be properly disallowed.

**Foreign Fishing Vessels.**—No. 4 enables justices of the peace and certain other persons to board and bring into port foreign fishing vessels which have purchased bait or tackle or supplies in the Colony or in colonial waters, or which have engaged or attempted to engage crews in the Colony. Such vessels are to be forfeited. This Act repeals 56 Vict. c. 6.

**Banks.**—No. 8 requires all banks transacting business in the Colony to furnish annual statements to the Minister of Finance and Customs of their business in the Colony.

**Pulp and Paper.**—No. 10 confirms the agreement made between the Colony and the Anglo-Newfoundland Development Company, a company formed by Messrs. Harmsworth, of London, for the purpose of establishing pulp and paper industries in the Colony. By the agreement certain lands are leased to the company for a term of ninety-nine years at an annual rent of \$2 per square mile. The company is to have the right to fell timber on the demised area at a royalty of fifty cents per 1000 feet, and such timber is to be manufactured into pulp or cut up into lumber. The company also receives the right to work minerals in return for a royalty of 5 per cent. of the net profit made. The Act obliges the company to spend \$1,000,000 within twenty years in erecting mills to pulp timber. Some of the provisions of the Act are unusual. For instance, it gives the company power under certain circumstances to compulsorily acquire land, and provides that

(a) See *supra*, p. 377.

(b) See *supra*, p. 363.

(c) Contributed by H. C. Gutteridge, Esq.

(d) 63 & 64 Vict. c. 62.

the forestry regulations of the company, when approved by the Governor in Council, are to have the force of law. The company are granted the option of renewing the lease at the expiration of the original term, and of every further term granted, by which means they appear to practically acquire the demised area in perpetuity.

**Cruelty to Animals.**—No. 15 amends No. 69 of the Consolidated Statutes (Second Series) by providing that under certain circumstances engine-drivers, train-hands, and police-constables may kill any injured animal which in their opinion, and in that of one other person present at the time, is fatally injured.

**Forest Fires.**—No. 17 repeals No. 76 of the Consolidated Statutes (Second Series), and contains elaborate regulations for the purpose of preventing forest fires.

**Peat Industry.**—No. 18 grants a bounty of twenty-five cents per ton on manufactured peat, and authorises the employment by the Government of an expert to examine and report upon the peat and bog areas of the Colony.

**Telegraphs.**—No. 21 empowers the Governor in Council to take possession of telegraphs when deemed expedient for the public service.

## 1906 (e)

## Acts passed—33.

**Foreign Fishing Vessels.**—No. 1 is noteworthy as being the Act which has brought the Newfoundland Fisheries dispute to a head, and has led to a diplomatic crisis between the British and United States Governments. Broadly speaking, the object of the Act is to prevent United States fishing vessels from procuring bait and from employing colonial fishermen in colonial waters. S. 2 provides penalties for foreign fishing vessels found in colonial waters and having on board bait, ice, lines, seines, or other fishing supplies purchased within the territorial limits of the Colony, or engaging or attempting to engage hands in the Colony. The presence of bait, etc., on board any foreign fishing vessel in colonial waters is to be deemed *primâ facie* evidence of offence committed. Ss. 6 and 7 prohibit the employers of British subjects to fish in foreign vessels, and impose penalties on residents leaving the Colony to fish in foreign vessels. Certain officials are by s. 7 given the power to board and search any foreign fishing vessel found in colonial waters, and to examine her master on oath touching the cargo and voyage. This Act has, however, practically been rendered inoperative by the action of the Imperial Government in exercising their powers under s. 1 of the Imperial Act, (f) which enables the Crown by Order in Council to

(e) Contributed by H. C. Gutteridge, Esq.

(f) 59 Geo. III. c. 38.



issue from time to time directions for securing to United States fishermen the rights granted to them by the Treaty of 1818.

The whole dispute has been referred to the Hague Tribunal, but in the meantime, by the Order in Council the serving of process on foreign vessels and the confiscation of such vessels or their tackle under the Act have been prohibited.

**Chinese Immigration.**—No. 2 regulates the immigration of persons of Chinese origin. It limits the number of Chinese who may be brought to the Colony by any vessel to one such immigrant for every fifty tons of tonnage. The Act also requires all Chinese immigrants to pay a head tax of \$300. The Act is substantially a reproduction of a Canadian Statute. (*g*)

**Aliens.**—No. 3 regulates the law with regard to aliens. It reproduces the Imperial Aliens Act, 1905, (*h*) with a few slight modifications rendered necessary by local conditions.

**Life Insurance.**—No. 5 amends the law relating to Life Insurance Companies. It provides that no person or company shall carry on any life insurance business in the Colony without a licence from the Minister of Finance and Customs. No such licence is to be issued until securities to the value of \$25,000 are deposited with the Minister, and this amount is to be increased if the liabilities of the depositor in the Colony exceed the deposit, or if the securities decline in value. Every company must furnish an annual statement of its affairs to the Minister, who is empowered to cause the agency in Newfoundland of each company to be visited at least once yearly, to inquire into the affairs of each company, and to value all Newfoundland policies at least once in every five years. The Act contains elaborate provisions with regard to the discontinuance of business by a licensed company and to the method adopted by a licensed company in computing the reserve necessary to be held in order to cover its liability to policy-holders.

**Companies.**—No. 6 amends the Companies Act, 1899. (*i*) It reproduces ss. 14 to 19 inclusive of the Imperial Companies Act, 1900, (*k*) and practically repeals ss. 199 to 204 inclusive of the Imperial Companies Act, 1862. (*l*) It further provides that in distribution of assets on a winding-up the provisions of the Judicature Act, 1904, as to preferential payments, are to apply as if the company being wound up were a person declared insolvent under that Act.

**Powers of Appointment.**—No. 11 provides that no appointment made in exercise of any power to appoint real or personal property among

(*g*) No. 8 of 1903. See *supra*, p. 178.

(*h*) 5 Edw. VII. c. 13, see *supra*, p. 124.

(*i*) See *supra*, p. 372.

(*k*) 63 & 64 Vict. c. 48.

(*l*) 25 & 26 Vict. c. 89.

several objects shall be invalid by reason of the exclusion of any object; unless the instrument creating the power shall contain a provision to that effect.

**Railways.**—No. 13 provides means for dealing with drunken or disorderly travellers and trespassers. Conductors or trains servants may eject drunken persons and confiscate their liquor, and the railway companies are prohibited from selling tickets to persons under the influence of liquor. Summary penalties are provided for persons obstructing railway servants, or behaving in a disorderly manner, or trespassing, or being drunk on a railway.

**Official Secrets.**—No. 14 requires clerks in the public service to take an oath of secrecy, and provides penalties for divulging information.

**Mines.**—No. 15 (*m*) is an Act respecting the regulation of mines. It reproduces several of the provisions contained in the Imperial Coal Mines Regulation Act, 1887. (*n*)

**Dogs.**—No. 16 enables the Postmaster-General to grant permits to mail couriers to keep dogs for the transport of mails, notwithstanding anything contained in the Keeping of Dogs Act, Consolidated Statutes (Second Series) No. 141.

**Intoxicating Liquors.**—No. 17 repeals No. 130 of the Consolidated Statutes (Second Series). It contains a number of interesting provisions. The granting of licences is entrusted to the stipendiary magistrates, except in the Labrador and in the district of St. John, where they are to be granted by a licensing Board, consisting partly of nominated and partly of ex-officio members. Licences are to be of two kinds, viz. wholesale and retail, but no new retail licences are to be granted until the total number of existing licences in any one place is reduced to a number bearing the proportion of one licence to two hundred adult male residents. No person holding a retail licence may sell more than two gallons of liquor at any one time to any one person, and, *vice versa*, no person holding a wholesale licence may sell less than two gallons at any one time to any one person. Persons adulterating liquor are subjected to heavy penalties, and rendered incapable of again holding a licence. Constables, if authorised in writing by a stipendiary magistrate, are empowered to procure samples of liquor and submit the same to analysis. The sale of liquor to persons under eighteen years of age, or to habitual drunkards, is forbidden. No licence-holder may exchange liquor for clothes, tools, fishing gear, household goods, or furniture. The employment on licensed premises of persons under twenty-one years of age, and of females other than members of the licence-holder's family, is also prohibited. No liquor is to be carried in any ship engaged in fishing or trading (with the exception of sealing) beyond such quantity

(*m*) See *infra*, p. 385.

(*n*) 50 & 51 Vict. c. 58.



under four gallons as may be *boná fide* required for ship's stores. The sale of intoxicants on railway trains is forbidden, except on the cross-country passenger train known as the Bruce Express. As regards clubs, the Act reproduces Part III. of the Imperial Licensing Act, 1902, (o) with a few slight modifications. No liquor is to be sold, given, or delivered to any Esquimaux or Mountaineer Indian, except for medicinal or sacramental purposes.

**Motor Cars.**—No. 18 reproduces the Imperial Motor Act, 1903, (p) with the following modifications: The speed limit during daylight is twenty miles per hour, but after sunset it is ten miles per hour, and no car may be driven in or within one mile of any inhabited place at more than ten miles per hour. A person exceeding the speed limit may, in the discretion of the Court, be sentenced to imprisonment not exceeding one month. Racing or driving for wagers is prohibited.

**Herring Fishery.**—No. 22 amends 61 Vict. c. 3. It provides for the appointment of a "fisheries expert" to supervise the curing and packing of herring.

No. 22 is an Act designed to encourage the herring fishery. It provides for subsidies to persons engaging in the herring fisheries with drift nets, and employing on each vessel not less than four residents in the Colony for a continuous period of at least two months. It also grants a bounty on all Scotch-cured herring, cured and packed by residents in the Colony, and allows free entry to colonial ports for all vessels from the United Kingdom engaging in drift-net fishing in colonial waters. The Governor-General is empowered to send not more than ten colonial fishermen to Scotland, at the expense of the Colony, for instruction in drift-net fishing and curing and packing.

**Game.**—No. 20 empowers the Governor in Council to appoint a Game Preservation and Inland Fisheries Board, whose duty it shall be to make inquiries as to the preservation of game, birds, and animals, and the inland fisheries of the Colony.

**Timber.**—No. 28 restricts the erection of sawmills upon timber lands within three miles of the coast, the object of this Act being to preserve the timber for the use of the fisheries, shipbuilding, and for fencing and firewood.

**Wireless Telegraphy.**—No. 9 confirms an agreement made between the Government and the Canadian Marconi Company. No. 31 provides that wireless stations shall only be worked under licence from the Postmaster-General, confirmed by the Governor in Council.

**Marine Engineers.**—No. 24 repeals 4 Edw. VII. c. 8, (q) and provides

(o) 2 Edw. VII. c. 28, see *supra*, p. 96. (p) 3 Edw. VII. c. 36, see *supra*, p. 106.

(q) See *supra*, p. 379.

for the examination and certificate of marine engineers. No steamer over 20 N.H.P. may go to sea without certified engineers.

1907 (*r*)

Acts passed—12.

**Education.**—No. 1 repeals s. 2 of the Education Act, 1903, (*s*) and substitutes other provisions. It allots the sum of \$20,000 to the several religious denominations of the Colony, to be employed in furtherance of education in districts where there are not means adequate for the support of schools.

**Companies.**—No. 2 amends the Companies Act, 1899. (*t*) It provides for the establishment of a registrar of mortgages and charges.

**Intestacy.**—No. 4 provides that the estate of every man dying without issue after July 1, 1908, shall, if its net value does not exceed \$2000, belong to his widow; or, if its net value exceeds \$2000, be charged with the payment of \$2000 to the widow, in addition to her share of the residue.

**Workmen's Compensation.**—No. 5 follows the Imperial Workmen's Compensation Act, 1897, (*u*) in the main, though it also incorporates some of the provisions of the Imperial Act, 1906. (*x*) Its operation is limited to the employment specified in s. 7 of the Imperial Act of 1897. Compensation is recoverable by action in the Supreme Court of the Colony.

**Mines.**—No. 6 amends the 6 Edw. VII. No. 15, (*y*) "An Act respecting the Regulation of Mines." It prohibits the employment underground of girls and women and also of boys under the age of thirteen.

**Agriculture.**—No. 7 establishes an Agricultural Experimental Station and Model Farm under the control of the Minister of Agriculture and Mines. Each electoral district in the Colony is entitled, in each year, to send two students, nominated by its representative, to the farm for free instruction.

**Shipping.**—No. 8 is an Act designed to encourage ship-building. It grants a bounty on all vessels with fixed decks built and equipped with new material in the Colony in accordance with the schedules to the Act.

(*r*) Contributed by H. C. Gutteridge, Esq.

(*s*) See *supra*, p. 378.

(*t*) See *supra*, p. 372.

(*u*) 60 & 61 Vict. c. 37.

(*x*) 6 Edw. VII. c. 58, see *supra*, p. 131.

(*y*) See *supra*, p. 383.



### III. BERMUDA. (a)

1898

Acts passed—26.

**Criminal Law (No. 1).** (b)—S. 1 of the Criminal Law Amendment Act makes an indecent assault a misdemeanour punishable with imprisonment not exceeding three years, with or without hard labour. S. 2 makes an attempt to commit a rape, or an assault on a female with intent to commit a rape, a misdemeanour punishable with imprisonment not exceeding four years, with or without hard labour. S. 3 renders a person charged with an offence under s. 2, and the wife of such person, a competent, but not a compellable, witness, thus remedying a defect in the existing Act, which was based on the English Criminal Law Amendment Act (c). S. 4 provides that males convicted of certain offences may be whipped. S. 5 provides that where a male under sixteen is convicted summarily before justices of the peace, they may, either in addition to or instead of sentencing the offender to imprisonment, order him to be privately whipped by a constable, or in the presence of a constable by some other person appointed by the justices, the parent or guardian of the offender being allowed to be present if desired.

**Immigration (No. 3).** (d)—The Immigration Act was passed with a view to prevent, as far as practicable, the immigration of persons likely to become a public charge. The master of a "passenger ship," as defined by the Act, is required to deliver to the immigration officer a correct list of such of the passengers as the Act applies to, and such passengers are precluded from leaving the ship until the provisions of the Act are complied with. The immigration officer before granting such permission is to go on board such ship and examine into the condition of such passenger, and if such passenger is found to have been a convict, or to be lunatic or idiot, or deaf or dumb, or blind or infirm, or unable to take proper care of himself or herself, or likely to become chargeable to the Government of these islands, the immigration officer is not to allow him to land (s. 7). The immigration officer may further require a passenger to satisfy him that he is in possession of

(a) Contributed by Hon. Reginald Gray, Attorney-General.

(b) See *infra*, p. 388.

(c) 48 & 49 Vict. c. 69, s. 20.

(d) Repealed by No. 58 of 1902, *infra*, p. 395.

at least £5 (s. 8). Permission to land may be given upon a bond of indemnity against the passenger becoming chargeable being given by two persons approved by the officer (s. 9).

**Quarantine (No. 12).**—The Quarantine Act was the first Act prepared under the Statute Law Consolidation Act, 1897, and consolidated five previous Acts relating to this subject.

**Revenue (No. 16).**—The Revenue Act contains one hundred and thirty-nine sections and three schedules, and consolidates eleven Acts dealing with the collection of the revenue.

**Synod (No. 17).**—The Synod Act. Under an Act passed in 1878 the Synod of the Church of England was incorporated, and its constitution, which was adopted at a public meeting of members of the Church, was confirmed. This constitution contained a provision prohibiting the Synod from making any alteration in its constitution or declaration of principles. Experience had proved this restriction to be undesirable; and by the above Act the Synod is empowered to amend its constitution on complying with the requirements of the Act.

**Conveyancing (No. 18).**—The title of this Act is the Married Women's Conveyance Act. Under the previous law it was necessary to the validity of a deed executed by a married woman conveying her real estate that such deed should be recorded at length in the Secretary's office within a limited period after execution. This Act substitutes the registration of a memorandum of the deed containing the date, the names of the parties, the description of the property, and the nature of the estate or interest conveyed.

**Ballot (No. 22).**—The Ballot Act provides that printed directions to be observed by voters shall be posted up in and about the room or place set apart for balloting purposes, and substitutes a simpler form of ballot-paper for that previously in use.

**Pilotage (No. 24). (e)**—The Pilot Act consolidates and amends seven Acts previously in force on the subject. It provides (1) for the constitution and powers of the Board of Pilot Commissioners; (2) for the issue of pilot licences; (3) the rates of pilotage; (4) the rights of first-class pilots; (5) the rights of, and penalties on, pilots; (6) provisions as to buoys and poles; (7) making and numbering of boats; (8) restrictions as to use of steamboats for piloting; (9) duties of, and penalties on, masters of ships; (10) inquiries by board; (11) procedure on prosecutions or complaints; (12) appeals; and (13) miscellaneous matters. The principal change in the law as it previously existed was the conferring on any pilot holding a first-class licence the privilege of piloting to sea a ship of which he had been the pilot when inward bound. Under the former Acts the pilot first within hail of an inward

(e) See *infra*, p. 391.



ship had the right to pilot her into the port; but the master could employ any pilot he pleased to take her to sea again.

**Criminal Law** (No. 25). (*f*)—The Offences against Property Act adopts some of the provisions of the English Statute law not previously in force in Bermuda, chiefly with regard to embezzlement and kindred offences.

**Married Women** (No. 26).—The Married Women's Protection Act amends an Act of 1894 on the same subject, by adopting portions of the Imperial Statute of 1895. (*g*)

## 1899

### Acts passed—36. (*h*)

The absurdity of the system of legislation which prevails in this Colony is amply demonstrated by the session which commenced on May 31st, and the work of which was not nearly completed at the end of the year, when, after forty-six sittings, only thirty short Acts had been passed, of which *seventeen* were continuing Acts.

There are upwards of a hundred and fifty Acts on the Statute Book of limited duration, and these come up periodically for renewal, the usual periods for which they are continued varying from five to ten years. The avowed object of the House of Assembly in perpetuating this practice is that it enables that body to introduce into a continuing Act any amendment which it may consider desirable, and to place the Legislative Council in the position of being obliged either to accept the amendment or to let the principal Act or Acts expire, and also that it enables the House of Assembly alone practically to repeal an Act by refusing to continue it. Repeated efforts have been made to limit the affixing of duration clauses to Acts of an experimental nature, but without success.

Of the thirty-six Acts which were passed during 1899, some seem to be of more than local interest, and among these the following may be mentioned:—

**Channels** (No. 2).—The West End Channels Act provides for the prevention of injury to the ship channels leading into Hamilton Harbour, which were deepened seven or eight years ago at a cost of £40,000, and also for the safety of ships using the same.

**Criminal Law** (No. 4). (*i*)—The Corporal Punishment Act requires the Court to prescribe the number of strokes to be inflicted, which are not to exceed twenty-four, and the instrument to be used, and prohibits

(*f*) See *supra*, p. 386, and *infra*, pp. 391, 394.

(*g*) 58 & 59 Vict. c. 39.

(*h*) This number includes six Acts which became law in January, having been passed in the Session of 1898-9.

(*i*) Repealed by No. 46 of 1902, *infra*, p. 394.

the carrying into execution of any such sentence without the previous consent of the Governor.

**No. 5. (k)**—The Prisoners' Relief Act enables the justices in quarter sessions of the peace to make regulations under which persons under sentence of imprisonment for two years and upwards may by industry and good conduct obtain a partial remission of their sentences.

**Church (No. 6).**—The Church Vestries Act incorporates the rector and church vestry of each parish, with power to acquire by purchase or otherwise real property not exceeding the net yearly value of £300, and all personal property given or bequeathed for the promotion of Christian knowledge, or any other lawful religious, educational, charitable, or benevolent purpose or object within the parish. This measure does away with the necessity of vesting property in ordinary trustees for such purposes.

**Agriculture (No. 14).**—The Bulbs Act provides for the inspection and treatment of all imported bulbs with the view to preventing the importation of diseased stock. The growing and exportation of Easter lily bulbs and other bulbs of various kinds, which has been an important industry in Bermuda for several years, was being threatened by the introduction of diseased bulbs from abroad, and this protective measure was therefore adopted.

**Post Office (No. 15).**—This Act provides for the consolidation (*l*) and amendment of the principal Act passed in 1879 and numerous amending Acts subsequently enacted, the work to be carried out by the Statute Law Consolidation Committee, with the assistance of a Post Office expert sent out from England.

**Alien (No. 17). (m)**—This Act was passed to enable the alien executors of an American citizen naturalised in Bermuda, who under his will were empowered to sell his real estate, to sell and convey the same within five years after the commencement of the Act.

**Survey (No. 18).**—Under Acts passed in 1894 and 1897 a trigonometrical survey of Bermuda has been carried out by the Royal Engineer Department, and it was deemed advisable to render the map more complete by accurately defining on it the parochial boundaries. This Act was therefore passed authorising the Governor to appoint a Commission of three persons to examine, ascertain, and mark out the reputed boundaries, which thereupon were to be taken for all purposes, subject to the provisions of the Act, to be the true and correct boundaries.

**Loan (No. 20).**—This Act authorised the raising of £5500 by the issue of local inscribed stock for the purpose of rebuilding portions of

(k) Repealed by No. 1 of 1905, *infra*, p. 397.

(l) See *infra*, p. 391.

(m) See *infra*, p. 392.



the causeway connecting the Island of St. George's with the mainland, which had been seriously damaged by a storm in September, 1899. The rate of interest was not to exceed  $4\frac{1}{2}$  per cent., and no stock was to be sold below par. The loan was issued at 4 per cent., and sold at an average premium of upwards of 5 per cent., the amounts tendered exceeding £20,000.

**Liquor** (No. 29). (*n*).—This was an Act submitted by the Statute Law Consolidation Committee for the purpose of amending the Liquor Licence Acts preparatory to their consolidation. As the Statute Law Consolidation Act provides that consolidating Acts shall not be open to amendment in their passage through the Legislature, any desirable changes are embodied in an amending Act, the provisions of which are subsequently consolidated with the other Acts on the same subject. It is found in practice that this system works well, and entirely prevents the mutilation of consolidating measures, which constantly happened under the former practice.

**Registration** (No. 36).—The Registration Act consolidates the principal Act (*o*) and eight subsequent amending Acts dealing with registration of births, marriages, and deaths. In its present form it is a comprehensive measure, and so arranged as greatly to facilitate reference to the law on this subject.

## 1900

### Acts passed—57.

The volume of legislation for 1900 considerably exceeded that of any previous year, and included six consolidating Acts, besides a lengthy and comprehensive Post Office Act consolidating nineteen Acts on this subject with numerous amendments.

A new departure was made by continuing several Acts of temporary duration by the means of two Expiring Laws Continuing Acts, instead of the objectionable method previously in use of continuing each of such Acts, or each series of Acts on the same subject, by a separate Act.

Of the fifty-seven Acts passed, the following seem of sufficient importance to be specially noted:—

**Parish Assessment** (No. 3).—Great difficulties having been experienced in the collection of parish assessments in consequence of changes in the ownership of land not being notified to the parish vestries, this Act was passed to require all persons becoming entitled to land to give notice thereof to the vestry clerk, and to enable the vestries to make transfers of real property without requiring the production of documents of title.

**Treaty** (No. 9).—The Treaty of Washington Act was passed to

(*n*) Repealed by No. 47 of 1900, *infra*, p. 391.

(*o*) 1865, No. 4.

make provision for carrying into operation the articles of a treaty negotiated in 1899 between Great Britain and the United States for improving the conditions of trade between the latter country and Bermuda by making reciprocal reductions in the import duty levied on certain articles, the product of the soil or industry of the two countries.

**Summary Jurisdiction (No. 14).**—This Act adopts some of the provisions of the English Acts on the same subject, and defines the mode by which the Court may enforce payment of any fine, penalty, or forfeiture imposed by any Act, past or future, where no authority for this purpose is given by the Act imposing it.

**Criminal Law (No. 26).** (*p*)—The Criminal Evidence Act is practically a transcript of the Imperial Criminal Evidence Act, 1898, (*q*) and repeals special provisions to the same effect in previous enactments.

**Short Titles (No. 33).**—This Act provides short titles for seventy Acts, and there are now comparatively few Acts on the colonial Statute Book which cannot be cited in this way.

**Census (No. 35).**—Provision is made by this Act for the taking of the usual decennial census in 1901, on a day to be fixed by the Governor in Council. The appropriation for the payment of the Commissioners and their clerk and the enumerators was £366, exclusive of the cost of printing, etc.

**Post Office (No. 45).**—The Post Office Act, which was prepared in conjunction with an expert sent out from England for the purpose, contains one hundred and twenty-one sections, and is based on the Post Office Consolidation Bill, which was for some years before the Imperial Parliament, (*r*) with such additions as were necessary to adapt the measure to local requirements. The prescribed form of postal order is considered to be an improvement on that in use in England.

**Intoxicating Liquors (No. 47).** (*s*)—This Act, which consolidates the principal Act of 1880 and six amending Acts, is a useful measure regulating and controlling the liquor traffic.

**Pilotage (No. 53).**—Under this Act officers in command of foreign national ships are exempted from certain payments and penalties imposed by the Pilot Act, 1898, (*t*) on masters of vessels for refusing to take a pilot and other kindred offences.

**Volunteers (No. 55).**—This Act amends the Bermuda Volunteer Act, 1892, in various respects, providing (*inter alia*) for the legal recovery of subscriptions and fines due under the rules of the corps and for the protection of the property of the corps, etc., and gives a right of appeal

(*p*) Repealed by No. 20 of 1905, *infra*, p. 398.

(*q*) 61 & 62 Vict. c. 36, see *supra*, p. 17.

(*s*) See *supra*, p. 390.

(*r*) It passed into law in 1903.

(*t*) See *supra*, p. 387.



to any Volunteer convicted of an offence where the sum adjudged to be paid exceeds £5 or the imprisonment exceeds one month.

**Militia** (No. 57).—The Bermuda Militia was raised under the Act of 1892, and this Act makes considerable amendments which subsequent experience has shown to be necessary. It provides for the embodiment of the Militia in case of imminent national danger or of great emergency, or of actual or apprehended invasion or attack on the Colony, and provides that the officers and men and their wives and families shall be entitled to the same pay, allowances, pensions, and other emoluments and advantages as the Militia of the United Kingdom.

## 1901

### Acts passed—40.

The number of Acts passed was above the average, but many of them are short, and comparatively few are of general interest. Six consolidating Acts were among the number, and the Statute Book is improved to this extent.

The following Acts may be specially mentioned :—

**Aliens** (No. 5). (*u*)—This Act made such amendments to the Alien Act, 1897 (No. 7), as were necessary to enable this Colony to obtain the benefits of the Convention between the United Kingdom and the United States of America, relative to the disposal of real and personal property, which was ratified on July 28, 1900. The Convention materially improves the position of the alien heirs and devisees of Bermudians, who, after emigrating to the United States, become citizens of that country and die leaving real property in Bermuda.

**Married Women** (No. 14).—This Act is practically a transcript of the Imperial Statute (the Married Women's Property Act), 1882, (*w*) as amended by the Married Women's Property Act, 1893 (*x*).

**Victoria Day** (No. 18).—Under this Act, May 24th is to be called "Victoria Day," to perpetuate the memory of our late Most Gracious Sovereign Lady, Queen Victoria, and is to be a public holiday.

**Tobacco Restriction** (No. 20).—This enactment imposes a small penalty on persons selling tobacco, cigars, or cigarettes to children under sixteen years of age. Shopkeepers are made liable for permitting breaches of the Act by their employees. It is a sufficient defence to a charge under the Act if the defendant proves that he had reasonable cause to believe that the person to whom the goods were sold was sixteen years of age. A prosecution must be commenced within one month.

**Criminal Law** (No. 26).—The Speedy Trials Act, which was based

(*u*) See *supra*, p. 389.

(*w*) 45 & 46 Vict. c. 75.

(*x*) 56 & 57 Vict. c. 63.

on a corresponding Canadian Statute, provides in substance that where a person is committed to prison charged with any crime which is not a felony, he may, with his own consent, be tried before the Court without a jury. As early as practicable the prisoner is taken before the Chief Justice, who informs him of the offence with which he is charged, and of his option to be tried without a jury. If he elects to be so tried he is at once arraigned, and if he pleads guilty is sentenced. If he pleads not guilty, a day is fixed for his trial before the Court, consisting of the Chief Justice and two assistant justices, and the trial proceeds in the usual manner.

**Jurors (No. 31).** (*y*)—In 1896 an Act was passed under which persons assessed for £60 were qualified as jurors, and those assessed at £200 as special jurors. The present Act does away with this distinction, but requires the magistrates, who annually revise the Register of Jurors, to select from the persons qualified as jurors such persons as are by reason of superior intelligence, or larger experience, or greater business capacity, or other special qualifications, specially qualified to act as jurors in criminal or civil cases of an unusually difficult or complicated description, and such persons are placed on the special jury list. Any criminal or civil trial may, by order of the Court, be tried by a special jury, which is in such a case selected from the persons returned as special jurors. The Act of 1896 provided that in a capital case the verdict must be unanimous, but this provision is now modified to the extent that, although a verdict of guilty of the capital offence must be unanimous, a verdict of not guilty, or guilty of a minor offence, may be found, as in other criminal cases, by a majority of three-fourths. Since the adoption of this latter principle it has been a rare thing for a jury to be discharged without a verdict, although this was previously of constant occurrence.

**Superannuation (No. 35).**—An Act of 1893 provided for the superannuation of the civil servants of the Colony so far as affected their service, subsequent to July 1, 1894, but the Legislature was unable at that time to agree on a scheme to cover service prior to that date. The recent Act gets over this difficulty and permits public officers to obtain the benefit of their service prior to 1894 by paying up the amounts which would have been deducted from their salaries if the Act had been in force, and allowing them a period not exceeding five years to make such payments. The Act has been generally accepted as an equitable adjustment of the matter in question.

(*y*) Repealed by No. 39 of 1902, *infra*, p. 394.



## 1902

Acts passed—61.

The session of 1902 was an unusually prolific one in view of the new Compilation of Laws of this Colony from 1690 to 1902, which has since been published in two volumes. (z) Nine consolidating Acts were among the number passed.

**Banking** (No. 5).—The Public Treasury Act authorised the opening of bank accounts by the Receiver-General in the two local banks, and the payment of public claims by cheque.

**Criminal Law** (No. 8) (z<sup>1</sup>).—The Bermuda Riot Act adopts the principal provisions of the English Statute Law with regard to riots. Recent immigration from the West Indies rendered this necessary.

**Partnership** (No. 10).—The Partnership Act is practically a transcript of the Imperial Statute of 1890, (a) with a few minor alterations for local purposes.

**Laws** (No. 19).—The Compilation of Laws Act authorised the preparation by the Attorney-General of a new edition of the Acts of the Colony from 1690 to 1902, with chronological tables and an alphabetical index.

**South African Prisoners** (No. 36).—The South African Prisoners Act was passed to remove any doubt as to the legality of the detention in Bermuda of certain convicted prisoners sent here from South Africa during the war.

**Jury** (No. 39). (b)—The Jury Act is a comprehensive measure consolidating the whole of the Statute Law of the Colony relative to jurors and juries.

**Corporal Punishment** (No. 46). (c)—This Act consolidates the existing local law on this subject, and places certain restrictions on whipping as a punishment for criminal offences.

**Patents** (No. 51).—The Patents, Designs, and Trade Marks Act regulates the local law on this subject, on which it is the first Act passed here. It was framed on the lines of a similar Act passed in Trinidad and Tobago in 1900. (d)

**Statute Law Revision** (No. 55).—This Act was passed to facilitate the new Compilation of Laws, and to enable its contents to be condensed as far as practicable. It provided for the repeal of various obsolete

(z) It was published in May, 1903, by Messrs. Wildy & Sons, of Lincoln's Inn Archway, London, and contains all the Statute Laws of the Colony in force at the end of 1902, except those portions which were omitted under the authority of the Statute Law Revision Act, 1902.

(z<sup>1</sup>) See *supra*, pp. 386, 391, 394.

(a) 53 & 54 Vict. c. 39.

(b) See *supra*, p. 393.

(c) See *supra*, p. 388, and *infra*, p. 395.

(d) See *infra*, vol. iii. p. 389.

enactments, and for the omission of others of no practical utility, and authorised various abbreviations in formal parts of Acts.

**Immigration (No. 58).**—The Immigration Act consolidated all the existing legislation on this subject. The principal Act was passed in 1898 (*e*) to endeavour to restrict the influx of undesirable immigrants, and amending Acts have been enacted almost yearly since to remedy defects which experience showed to exist.

## 1903

Acts passed—16.

After the abnormal legislative activity in 1902 it was natural to expect a comparatively unproductive session in 1903, and the number of Acts passed was the smallest for many years.

**Wireless Telegraphy (No. 2).** (*f*)—This Act prohibits the transmission or receipt of messages across the seas by means of wireless telegraphy, or the installation of apparatus for the purpose except by persons licensed by the Governor. Licences may be revoked, and power of search is given on suspicion of the violation of the Act.

**Corporal Punishment (No. 3).** (*g*)—This enactment contains an important provision designed to prevent the imprisonment of boys under twelve. It provides in substance that, whenever any male under sixteen is convicted of an offence for which he would be liable to imprisonment, the Court may, either in addition to, or instead of, passing a sentence of imprisonment, sentence the offender to be once privately whipped. But whenever any male under twelve is convicted for such an offence, and any parent, relative, or friend of his shall pay such fine as the Court shall consider proper, or, in the event of the offence having occasioned loss or damage to any person, shall make good such damage or such part thereof as the Court shall consider reasonable, the Court may discharge the offender without punishment. In the absence of a reformatory or any other analogous institution it often became difficult to deal with youthful offenders.

**Public Officers' Bonds (No. 11).**—Prior to the passing of this Act the only form of security permitted to be given by public officers was a bond with two sureties. This Act permits as an alternative the giving of a bond by a guarantee company approved by the Secretary of State for the Colonies.

**Victoria Memorial (No. 12).**—This Act provides for the erection of a new public library and museum to be called "The Victoria Memorial," in commemoration of the happy and illustrious reign of her late Majesty, Queen Victoria.

(*e*) See *supra*, p. 386.

(*f*) Continued by No. 42 of 1907, *infra*, p. 402.

(*g*) See *supra*, p. 394.



**Fire and Marine Insurance (No. 16).**—For many years the business of fire and marine insurance here has been in the hands of the local agents of companies incorporated in England, Canada, and the United States. This Act incorporates a local company with full power to transact all business of this nature.

**1904**

Acts passed—33.

**Lighthouses.**—In amending an Act of 1900, No. 3 places the management of the lighthouses on a more desirable footing. Under its provisions the powers and authority hitherto vested in the Lighthouse Commissioners have been transferred to the Governor and the Governor in Council, and the Board of Lighthouse Commissioners has been abolished.

**War Department Land.**—No. 6 deals with the manner of acquiring land in the Colony for military purposes, and the mode of determining the compensation for land thus acquired.

**Whaling Industry.**—No. 7 grants a monopoly for a period of twenty years, under certain conditions, to carry on a whaling industry in the islands. The concession is made chiefly on the grounds that the establishment of a modern whaling factory would be a benefit to the Colony in affording employment to a number of natives, both at sea and on land.

**Biological Station.**—No. 22 provides for the erection and establishment of an aquarium and biological station in Bermuda, the former to serve as an attractive institution of public interest, and the latter to offer opportunities for biological research to scientists coming to the Colony from abroad.

**Island Steamboats.**—No. 27 was passed with a view of ensuring protection to passengers travelling in the island steamboats and ferry steamers, and also to abate certain nuisances caused by the absence of proper regulations governing the conduct of the persons in charge of such steamboats. Under the provisions of the Act, the masters of all steamboats are required to satisfy the Pilot Commissioners as to their competency, and to obtain a licence to entitle them to pilot steamboats.

**Board of Public Works.**—No. 32 confers on the Board of Public Works power to order the abatement or removal of conditions existing which constitute a danger to the passengers on public highways. Similar powers were hitherto conferred on the local parish vestries, in their jurisdiction as local boards of health, but it was also considered desirable to confer full powers in this connection on the Board of Public Works.

## 1905

## Acts passed—39.

The session of 1905 was a prolific one, and several measures prepared by the Hon. H. C. Gollan, Chief Justice, were added to the Statute Book, among which may be mentioned the Supreme Court Act, the Evidence (Consolidation and Amendment) Act, and the Appeals Act.

**Prisoners** (No. 1). (*h*)—This Act enables a prisoner under a first sentence of imprisonment for more than six months to earn, by industry and good conduct, remission of sentence not exceeding one-fourth in case of males, or one-third in the case of females. A prisoner under a second sentence which is for two years or upwards may, if his or her industry and conduct during the first year has been favourably reported on by the keeper, earn remission of sentence in the same proportions as mentioned above. A prisoner sentenced a third time or oftener for two years or upwards cannot earn any remission of sentence. Regulations made under the Act adopt the mark system substantially as it exists in England.

**Dockyard Port** (No. 2).—For the first time in the history of the Colony a specific area of water has been appropriated as a mooring-place and anchoring-ground for his Majesty's ships. The Governor in Council is authorised to make regulations for the port, and the Admiralty can appoint a King's Harbour Master, on whom the Act confers considerable powers. The Admiralty is constituted the harbour authority for the port and the ship channel leading thereto from sea.

**Judicature : Supreme Court** (No. 4).—This consolidating Act, which amalgamates all the existing Colonial Courts under the title of the Supreme Court of Bermuda, contains five parts—Part I. dealing with the constitution of the Court, Part II. with jurisdiction and law, Part III. with sittings and distribution of business, Part IV. with the officers of the Court, with provisions as to the admission of barristers and attorneys, and Part V. fixes the date for the commencement of the Act and repeals numerous previous enactments.

**Trading Stamps** (No. 7).—For the purposes of this Act "trading stamp" is defined as "any stamp, ticket, coupon, label or other similar device, which will entitle the holder thereof on presentation thereof, either singly or in any definite number, to receive either directly from the vendor, or indirectly from any other person, money or goods." A trading stamp company was formed here which supplied to retail tradesmen adhesive stamps at a fixed rate, which were issued by the tradesmen to their cash customers, the number being proportionate to the amount of the purchase. The company undertook to deliver articles

(*h*) See *supra*, p. 389.



of an ornamental or useful description in exchange for specific numbers of stamps. Customers were deluded into the belief that by this means they received the equivalent to a cash discount of about 4 per cent., but by far the larger share of the percentage went to the company, the customer participating only in a minor degree. The Act requires trading stamps to have on them the name of the vendor and the cash value of the stamp, and makes them redeemable by the vendor in cash at their face value. The result has been that most customers cash their stamps with the vendor instead of exchanging them with the company for goods, and the latter is closing up its business.

**Evidence** (No. 20). (*i*)—This Act, which contains sixty sections, consolidates and amends the previous Statute law of the Colony on this subject. It is divided into four parts. Part I. contains interpretation clauses, Part II. deals with witnesses, Part III. with proof of documents, and Part IV. contains a few sections dealing with other matters.

**Education : Scholarships** (No. 21).—Under the will of the late Cecil J. Rhodes, Bermuda became entitled to an Oxford Scholarship. This Act establishes two Bermuda Scholarships of £150 each tenable for two years at some educational establishment out of the Colony, the object being to give candidates for the Rhodes Scholarship the advantage of two years' education abroad preparatory to their taking up the Oxford Scholarship. One of the qualifications of the Rhodes Scholarship is five years' education in Bermuda between the ages of twelve and twenty. The local scholarship enables a youth to leave Bermuda at the age of seventeen and to enter Oxford at nineteen.

**Appeals** (No. 25).—This is a comprehensive measure providing a uniform mode of procedure in appeals from inferior Courts to the Supreme Court.

**Marriage** (No. 27). (*k*)—This Act amends and consolidates previous enactments and deals with the solemnisation of marriages. "Incumbent" is defined as including the rector of any Church of England living, the bishop of the diocese, the archdeacon, and the residentiary canon of the cathedral. "Minister" includes any clergyman or minister of any Christian body and an officer of the Salvation Army authorised by the proper authority of that body to perform marriages between members of that body. "Licensed minister" means a minister licensed by the Governor in Council to perform marriages. An incumbent or licensed minister may solemnise marriages after publication of banns or under a licence issued by the Governor. A marriage is null and void if both parties knowingly and wilfully acquiesce in its celebration under false names, or without due publication of banns, or without a licence duly

(*i*) See *supra*, p. 391.

(*k*) See *infra*, p. 400.

issued, or by a person not empowered to celebrate marriages under the Act.

**Health (No. 30).**—This Act makes important amendments to the Health Acts, particularly with regard to the suppression of nuisances.

**Medical Practitioners (No. 31).**—Provision is made by this Act for the better registration of persons qualified to practise medicine or surgery. A register is to be kept by the Colonial Secretary, the first entries in which were the names of the medical men previously recognised under the Acts for payment of medical witnesses. The Governor in Council appoints a Medical Board to deal with new applications for registration. This board examines the applicant's credentials, and can also examine him as to his competency and fitness, and if satisfied grants him a certificate which entitles him to registration on payment of a fee of £6. Provision is also made for the removal of names from the register for sufficient cause. Registered practitioners may recover reasonable charges for medical or surgical aid, and the cost of medicines and medical appliances.

**Motor Cars (No. 33).**—This Act regulates the speed of motor cars, the maximum limit being fixed at ten miles an hour, the reason given being the tortuous nature of most of the roads and the consequent danger to other vehicles.

## 1906

### Acts passed—31.

**Agricultural Products: Inspection (No. 8).**—This Act consolidates and amends previous legislation regulating inspection of certain kinds of agricultural produce before shipment abroad. Government inspectors examine on the shipping dock not less than 10 per cent. of every lot deposited for shipment, and see that it is properly marked and graded according to size and quality. Any lot of produce considered unfit for shipment is repacked under the direction of the inspectors and the defective portions destroyed, the owner bearing the expense. Where an entire lot is condemned as altogether unfit for shipment, it is destroyed.

**Criminal Law: Cruelty to Animals (No. 12).**—This repeals a previous Act and increases the punishment for offences. "Animal" is defined as "any domestic animal, whether a quadruped or not," and "wild animal" as "any animal not being a domestic animal." The punishment for cruelty to any animal is imprisonment not exceeding three months, or a fine not exceeding £10, or both; and for cruelty to a wild animal in captivity is a month's imprisonment or a fine of £5. The Court may order the animal to be sold to pay custody expenses, fine, or costs. Persons committing offences and not desisting when called on by a constable may be arrested without warrant. A search warrant



may be issued to visit premises when there is reasonable cause to believe the Act is being violated. A person convicted may appeal to the Supreme Court.

**Marriage** (No. 16).—By the Marriage Act of 1905, (*l*) which consolidated and amended the marriage laws of this Colony, those of the clergy who came under the designation “incumbent” as defined in the Act are allowed to celebrate marriages without being especially licensed for the purpose, whilst other ministers must obtain a licence. The present Act confers on naval and military chaplains similar privileges to those enjoyed by incumbents, where either party to the marriage is a member, or the son or daughter of a member, of his Majesty’s sea or land forces.

**Health** (No. 20).—This Act authorises the General Board of Health to provide an isolation hospital for the reception of persons suffering from any contagious or infectious disease, the expense to be defrayed out of the general annual grant at the disposal of the Board. Under a previous Act every local board had a similar power, but the expense had to be assessed on the taxpayers of the district. A justice of the peace, with the consent of the medical officer of health, and on a certificate signed by a resident medical practitioner, may order the removal to the hospital of any person affected with infectious or contagious disease, and being without proper lodging or accommodation, or being on board any ship.

**Customs : Tariff** (No. 29). (*m*)—The efforts of several years culminated in 1906 in the adoption of an improved financial system, and this is the first Customs Tariff Act, properly so called, which has ever been passed here, at all events within the last hundred years. It increases the import duties on some articles, chiefly on spirits, tobacco, and cigars, but these have been so low in the past that the increase will hardly be felt. An interesting feature in the tariff is that the Colony has within the last few years imposed import duties on various articles with the view of protecting local industries. Among these articles may be mentioned arrowroot, bananas, Easter lily bulbs, eggs, potatoes, and water-melons.

**Appropriation** (No. 31).—This Act, for the first time in the history of the Colony, makes specific appropriations in one Act for the general expenditure of the next financial year, except so far as such expenditure is provided for by other Acts. Salaries and some other grants for specific purposes are voted by Acts of limited duration which are from time to time continued for a few years.

(*l*) See *supra*, p. 398.

(*m*) See *infra*, p. 402.

1907

Acts passed—47.

**Education.**—No. 1 is an attempt to deal on improved lines with primary education, the annual grant for which was increased by £500. The schools are not public institutions, but private ones aided by contributions from the legislative grant. The Board of Education is assisted by a local school committee and an education officer appointed by the Board.

**Immigration.**—No. 4 provides for the deportation to the place whence he came of any immigrant who within three years after his arrival is imprisoned for a criminal offence, or becomes an inmate of the lunatic asylum, or becomes chargeable to any parish, or is found to be suffering from any loathsome, dangerous, contagious, or infectious disease. It also makes it a penal offence for any person who would be subject to the Immigration Acts if Bermuda were his destination to land without the permission of the immigration officer.

**Insect Pests.**—No. 6 authorises the Board of Agriculture to prune, cut back, or trim trees, vines, and shrubs, the fruit of which is subject to the attack of the fruit fly (*Ceratitis capitata*), and prohibits the importation from the West Indies of certain fruits which may be infested by the fly. The Act has worked well, and it is believed that it will result in the extermination of the fly and render it possible for peaches and similar fruits to be produced in their former perfection.

**Aliens.**—No. 12 makes a very important change in the law with respect to the acquisition by aliens of land in Bermuda. Hitherto only a naturalised alien could hold land, and then only with the express permission in each case of the Governor. Under the new Act real and personal property of every description may be taken, if acquired, held and disposed of by an alien in the same manner as by a natural-born British subject. The sanction of the Governor in Council is necessary before an alien can acquire land by deed, and such sanction can be given only to the extent of 2000 acres in the whole Islands, and 400 acres in any one parish. The Act also deals with naturalisation, and naturalised persons are given all the privileges of natural-born British subjects, except that of becoming a member of the Legislature. The principal object of the Act is to encourage wealthy Americans to acquire property here and build winter residences.

**Criminal Law.**—No. 13—the Criminal Code Act—declares, consolidates, and amends the criminal law. It was prepared by the Chief Justice, Hon. H. C. Gollan, mainly on the lines of the Queensland Code, (n) with the necessary adaptations to Bermuda. It contains six

(n) See *infra*, pp. 501–506.



hundred and two sections, and repeals the whole or parts of seventy-three local Acts. It is a most valuable addition to the Colonial Statute Book.

**Volunteers.**—No. 17 authorises the organisation and maintenance of a Volunteer Cadet Corps in connection with the Bermuda Volunteer Rifle Corps, the principal object being to train boys who will ultimately become members of the Volunteer Force. An annual grant of £300 is made by the Legislature to defray the expenses.

**Interpretation.**—No. 20 amends and consolidates the provisions of nine previous Acts dealing with interpretations and Statute Law construction. It deals with past Acts as well as future ones.

**Ocean Yacht Races.**—No. 33 exempts the masters of yachts or boats competing in ocean races to Bermuda from certain requirements of the Pilot Acts, including that of taking a pilot on arrival or departure.

**Wireless Telegraphy.**—No. 42 continues indefinitely the Temporary Act of 1903 (No. 2), (o) which prohibited the transmission or receipt of wireless messages except under the written licence of the Governor. The Act was made perpetual at the urgent request of the Imperial Government.

**Customs.**—No. 44 re-imposes the increased import duties which were fixed by the Act of 1906 (p) with the object of yielding a sufficient revenue to meet current expenditure for 1908, and the result promises to be highly satisfactory. Protective duties are imposed on unmanufactured arrowroot, lily bulbs, eggs, and water-melons throughout the year, and on bananas and potatoes during those portions of the year when our own products are obtainable. There is a 5 per cent. *ad valorem* duty on most of the necessities of life, and a 10 per cent. duty on other articles. On spirits, cigars, and tobacco there is a specific duty plus an *ad valorem* duty. Among the articles admitted free of duty are books, coal, fresh fruit, ice, paintings, sculpture, and trees, bulbs and shrubs for planting.

(o) See *supra*, p. 395.

(p) See *supra*, p. 400.

# AUSTRALASIA.

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## I. COMMONWEALTH OF AUSTRALIA.

1901 (*a*)

Acts passed—Public, 17.

**Introductory Observations.**—It was to be expected that the work of the first session of the first Parliament of the Commonwealth of Australia would lead to the passing of Statutes of primary importance, and the result accords with expectation. Four of the seventeen Acts passed in 1901 are Consolidated Revenue Acts. Among the remaining thirteen are important Acts dealing with the Interpretation of Acts (No. 2), Audit (No. 4), Customs (No. 6)—an Act of 277 clauses, containing elaborate provisions for the collection of duties, etc., and a list of “prohibited imports”—Excise (Nos. 7, 8, 9), the Service and Execution of Process, civil and criminal, throughout the Commonwealth (No. 11), the Postal and Telegraph Services (No. 12)—an Act which stipulates that only white labour shall be employed in the carriage of Australian mails—the Acquisition of Property for Public Purposes (No. 13)—an Act drawn somewhat on the lines of the Imperial Lands Clauses Consolidation Act, 1845 (*b*)—and finally two Acts which are of perhaps more general interest than any of the others:—an Act for the

(*a*) Contributed by A. R. Butterworth, Esq.

(*b*) 8 & 9 Vict. c. 18.



restriction, and in a few years the prohibition, of the introduction of labourers from the Pacific Islands (No. 16)—and the Immigration Restriction Act (No. 17), founded on the well-known Natal Act of 1897, but more sweeping still in its provisions.

**Interpretation** (No. 2).—The provisions of this Act follow in the main those of the Imperial Interpretation Act, 1889, (c) and possess the advantage of not having to distinguish between past and future Statutes, but apply to all Acts of the Commonwealth Parliament (s. 2). The Act also adopts some of the special provisions of the New South Wales Interpretation Act of 1897 (No. 4). Distance is to be measured, not, as under the latter Act, according to the nearest route ordinarily used, but, as under the Imperial Act, in a straight line on a horizontal plane (s. 35). “Person” is to include a “body politic” as well as a body corporate—an enactment which may possibly conduce to strange results. “Land” is to include “messuages, tenements, and hereditaments, corporeal and *incorporeal*, of any tenure or description”—a definition which, by ignoring the fundamental distinction that runs through all our law of real property between lands on the one hand and incorporeal hereditaments on the other, seems likely to lead to much confusion. (d) The “financial year” is made to end on June 30th, not, as in England, on March 31st (s. 22). Where time is referred to, “such time shall, unless it is otherwise specifically stated, be deemed in each State or part of the Commonwealth to mean the standard or legal time in that State or part” (s. 37).

**Audit** (No. 4).—This Act provides for the appointment of an Auditor-General and other officers, for the keeping of the public account with a bank, the regulations to be observed before public money can be withdrawn, the adjustment of accounts of the various States by the Treasurer’s transferring money from one bank to another, the audit and inspection of accounts, returns, and vouchers, the publication of quarterly and yearly statements, and of the yearly report of the Auditor-General, which is to be laid before Parliament. Provision is also made for keeping a separate account in the Treasury of a Loan Fund and also of a Trust Fund; for imposing penalties for offences; and for enabling the Governor-General to make regulations for carrying out the provisions of the Act.

**Evidence** (No. 5).—This Act, to be cited as the State Laws and Records Recognition Act, provides for judicial notice being taken

(c) 52 & 53 Vict. c. 63.

(d) It is true that a similar definition of “land” has been given in earlier Acts of various Australian States, but this fact does not remove the objection to it. Such a definition in a general Interpretation Act seems likely to lead to more confusion than if it were contained only in such Acts as those dealing with the transfer of land, although in these also it can hardly fail to raise points of construction very difficult of solution.

by all Courts within the Commonwealth of all State Acts of Parliament and of certain seals and signatures, and for the proof in such Courts of certain documents, matters, and judicial proceedings. "Courts within the Commonwealth" include all Courts exercising federal jurisdiction, the Inter-State Commission when sitting as a Court, and all Courts of the several States and parts of the Commonwealth (s. 2). By s. 8, "whenever by any State Act at any time in force in any State (1) any public document; or (2) any record required by law to be kept of any public document or proceeding; or (3) any certified copy of any public document or bylaw or of any entry in any public register or book, is admissible in evidence for any purpose in that State, it shall be admitted in evidence to the same extent and for the same purposes in all Courts within the Commonwealth, if it purports to be sealed" or stamped or signed as directed by such State Act, without any further proof, in every case in which the original document could have been received in evidence. The effect of this enactment would seem to be to adopt throughout the Commonwealth the widest provision made in any individual State as to the admission in evidence of such a document provided the State Act directs that it should be sealed, stamped, or signed. Such a provision, however, as that contained in the New South Wales Evidence Act, 1898, (*e*) whereby evidence of any written law of any State, British or foreign, may be given by producing a printed copy in a volume of such law, purporting to be published by the authority of the Government of such State, but not requiring such a document to be sealed, stamped, or signed, is not within the terms of the present enactment. The expression in this and the following section, "at any time in force in any State," appears not to be a very happy one, as it is wide enough to cover a *repealed* State Act; but it is presumed that it is intended to be equivalent to "for the time being in force in any State."

**Customs (No. 6).**—This Act of 277 sections is divided into seventeen parts, and deals with the customs generally. Part IV., relating to the importation of goods, has four divisions: (1) prohibited imports; (2) the boarding of ships; (3) the report of the cargo; (4) the entry, unshipment, landing, and examination of goods. The importation of prohibited articles is forbidden under a penalty of £100 (s. 50), and prohibited imports include the following: Articles infringing copyright existing in the King's dominions, of the existence and date of expiration of which written notice has been given to the Minister administering the customs by or on behalf of the proprietor of such copyright; goods manufactured or produced wholly or in part by prison labour,

(*e*) No. 11, s. 19. This section will be found set out in full in the summary of the State legislation, *infra*, p. 442.



or which have been made within or in connection with any prison gaol, or penitentiary; tea, either exhausted, or adulterated, or unfit for human use, or unwholesome; oleomargarine, butterine, or any similar substitute for butter, unless coloured and branded as prescribed; all goods the importation of which may be prohibited by proclamation; goods having thereon or therewith any false suggestion of any warranty, guarantee, or concern in the production or quality thereof by any persons, public officials, Government or country; and mineral oil and mineral spirits, unless imported under and subject to such restrictions as may be declared by proclamation (s. 52). No spirits, opium, tobacco, snuff, cigars, or cigarettes are to be imported except in packages as prescribed (s. 53). Provision is made for the examination and analysis of imported tea (s. 54). All goods lawfully prohibited to be imported in any State are as regards that State to be prohibited imports (s. 55). Lists of copyright books of which due notice has been given under s. 52 are to be open to public inspection at the principal ports (s. 57). The Act contains special provisions respecting the boarding of ships, the places they may enter, and their removal before discharging the cargo (ss. 58-63); and the report to be made by the master to the Collector by delivering an inward manifest, and the questions to be answered and the documents to be produced by him (ss. 64, 65).

Part V. (ss. 78-110) deals with the warehousing of goods, and Part VI. (ss. 111-126) with exportation. The exportation of the following goods may be prohibited, either generally or to any particular place—

All arms, explosives, military and naval stores the export of which is prohibited by proclamation, including any article which the proclamation shall declare to be military or naval stores, or to be capable of being converted into them or of being made useful in increasing the quantity thereof (s. 112).

Ships' stores, whether shipped in parts beyond the seas or in the Commonwealth, unless entered for home consumption, or except as prescribed, shall only be used by the passengers and crew and for the service of the ship and after the departure of such ship from her last port of departure in the Commonwealth (s. 127).

Respecting the alteration of duties, the following provision is made by s. 152:—

If, after any agreement is made for the sale or delivery of goods duty paid any alteration takes place in the duty collected affecting such goods before they are entered for home consumption, then in the absence of express written provision to the contrary the agreement shall be altered as follows:—

(a) In the event of the alteration being a new or increased duty, the

seller after payment of the new or increased duty may add the difference caused by the alteration to the agreed price.

(b) In the event of the alteration being the abolition or reduction of duty, the purchaser may deduct the difference caused by the alteration from the agreed price.

(c) Any refund or payment of increased duty resulting from the alteration not being finally adopted shall be allowed between the parties as the case may require.

In the case of *ad valorem* duties "the value shall be taken to be the fair market value of the goods in the principal markets of the country whence the same were exported in the usual and ordinary commercial acceptation of the term and free on board at the port of export in such country, and a further addition of 10 per cent. on such market value" (s. 154).

Whenever the Collector has a doubt as to the accuracy of the declared value of dutiable goods, he may detain such goods and assess the value thereof. Should the owner object to the value so assessed, he may request that the value may be ascertained by experts in manner prescribed. Should the owner refuse to pay the duty as assessed by the Collector or ascertained by experts, the Collector may sell the goods. The provisions of this section shall not apply in cases where the Minister is of opinion that any evasion of this Act has been committed or attempted (s. 158).

(1) For the protection of the revenue against the under-valuation of goods subject to *ad valorem* duties any goods entered as of a specified value may, at any time before sale and delivery to a person who shall prove to the satisfaction of the Collector that he purchased and took delivery in good faith and without any knowledge of the entry, and subject as may be prescribed, be purchased by the customs at their declared value with an addition of £10 per cent. on the amount of such value. (2) The purchase shall be effected by the seizure of the goods by an officer and written notice of the seizure given to the owner (s. 161).

Part IX. (ss. 168–174) deals with drawbacks, and provides that "drawbacks of import duty may be allowed on exportation in respect of such goods (other than spirits, wine, beer, tobacco, cigars, cigarettes, and opium) to such amount and in such manner as may be prescribed" (s. 168).

The remaining parts relate to the coasting trade, agents of owners of goods, the powers of officers acting under the Act, penal provisions, prosecutions, the settlement of disputes, regulations, and miscellaneous matters.

**Excise** (Nos. 7, 8, 9).—These three Acts relate to excise. The Excise Act (No. 9) deals with excise generally, providing for administration, the licensing of manufacturers, excise supervision and control,



and the punishment of offences by forfeiture and penalties. No person is to produce "material" for the purpose of sale or manufacture unless he is registered as a producer (s. 25), and "material" includes all material used in the manufacture of excisable goods—*i.e.* goods in respect of which Parliament imposes excise duty—and declared by proclamation to be material (s. 4). No fees are to be charged for the registration of producers or dealers under the Act, but licence fees shall be as prescribed (s. 14). The fees prescribed by Schedule VIII. for a factory licence are for the manufacturing of tobacco, cigars, cigarettes, and snuff.

The Beer Excise Act (No. 7) and the Distillation Act (No. 8) expressly incorporate the greater part of the provisions of the Excise Act. These Acts provide for the licensing of brewers and distillers, and the supervision and regulation by excise officers of breweries and distilleries respectively, and the computation and payment of duty, and declare the powers of excise officers. Offences as to illicit stills and spirits are punishable by fine not exceeding £500.

**Process** (No. 11).—The Service and Execution of Process Act provides for the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the Courts of the States and of other parts of the Commonwealth. Three Acts of the Federal Council of Australasia (*f*), are repealed (s. 2)—*viz.* the Australasian Civil Process Act, 1886; the Judgments Act, 1886; and the Testamentary Process Act, 1897—and the main provisions of the two former Acts are re-enacted. A writ of summons issued out of any Court of record of a State may be served on the defendant in any other State (s. 4). The time limited for appearance, if the writ is issued or to be served in Western Australia or in the Northern Territory, is forty-five days, otherwise thirty days (s. 8). Any defendant served under the Act may apply for an order, which the judge may make, compelling the plaintiff to give security for costs (s. 10). Provision is made for the plaintiff to obtain leave to proceed on default of appearance (s. 11). A summons for a criminal offence, punishable by indictment or summarily, sworn to have been committed in one State may be served in another State on the person charged (s. 15); and a subpoena or summons issued in one State to a witness to appear in a civil or criminal proceeding may, upon proof that his testimony is necessary

(*f*) The powers of this extinct body were transferred to the Parliament of the Commonwealth by the Constitution Act, 1900, 63 & 64 Vict. c. 12, s. 51 (xxxviii.). The small interest taken in the Statutes of the Federal Council affords a curious comment on its legislative labours. Its Acts have received scant recognition in Australia itself. The 1890 edition of the Victorian Statutes in seven large volumes contained the seven Acts of the Federal Council which had up to January, 1891, been passed, but the later Acts were not published in the sessional volumes of the Victorian Statutes, nor, it is believed, in those of any other Colony.

in the interests of justice, by leave on such terms as the Court, judge, or magistrate may impose, be served on the witness in any other State; and if he fails to attend, on proof of due service and that reasonable expenses were tendered, a warrant for his apprehension may be issued (s. 16). A writ of attachment for contempt or disobedience of an order of a Court of record of one State may be executed in another State, by leave of a judge of the High Court or of a judge of the Supreme Court of such other State (s. 19). Where a judgment is given in one State, provision is made for registering and enforcing it in another State (ss. 20-26). Authority is given to the Governor-General to make regulations for carrying out the provisions of the Act (s. 28).

**Post and Telegraph** (No. 12). (g)—This Act, which came into force on December 1, 1901 (s. 1), contains a hundred and fifty-nine clauses, and is divided into nine parts, as follows: I.—General (ss. 3-65); II.—Conveyance of mails by ships (ss. 66-73); III.—Money orders and postal notes (ss. 74-79); IV.—Telegraphs (ss. 80-96); V.—Regulations (s. 97); VI.—Penalties (ss. 98-139); VII.—Protection of telegraph lines from injurious affection by electric lines or works (ss. 140-150); VIII.—Legal proceedings (ss. 151-156); IX.—Notice and limitation of actions (ss. 157-159).

The Act repeals twenty-one Post and Telegraph Acts of the several States, but preserves existing regulations and rates and charges (s. 2 and Schedule I.). It gives the control of the postal and telegraphic services of the Commonwealth to the department of the Postmaster-General, in whom the administration of the Act is vested (ss. 4, 5). S. 16 enacts that—

(1) No contract or arrangement for the carriage of mails shall be entered into on behalf of the Commonwealth unless it contains a condition that only white labour shall be employed in such carriage.

(2) This condition shall not apply to the coaling and loading of ships at places beyond the limits of the Commonwealth.

Railways and tramways must carry mails when required, for which payment is to be made according to agreement, or in default of agreement as settled by arbitration (ss. 17, 18).

Postage of one penny is to be charged on letters not over half an ounce forwarded *by* or addressed *to* seamen on actual service in the King's Navy or Marine Defence Force of any British possession, or *to* a non-commissioned officer or man on actual service in the King's Regular forces or permanent Land Force of any British possession, provided it "bears on its face" certain particulars; but the section does not apply to the letters of "a commissioned or warrant officer in

(g) See *infra*, p. 418.



the Land or Marine Forces or a midshipman in the Marine Forces" (s. 21). The definition of a newspaper is very wide. It must consist "in substantial parts of news and articles relating to current topics, or of religious, technical, or practical information," and be published in numbers at intervals of not more than one month; while a supplement must consist "in substantial part of reading matter other than advertisements" or of engravings, etc. (*h*) (s. 28). Newspapers must be registered in order to be posted as such, and a publication may be removed from the register if "by reason of the proportion of advertisements to other matters therein, or for any other reason," it is not within the description given; an appeal against such removal lying to a judge (s. 29). Provision is made for the issue of postage stamps (ss. 30-36), the registration of letters, etc. (s. 38), and for dealing with postal articles generally. Part VII. of the Act places restriction upon works for the generation, use, or supply of electricity whereby any Government telegraph line may be injuriously affected.

**Property for Public Purposes Acquisition** (No. 13).—This important Statute of sixty-three sections is divided into six parts as follows: I.—Preliminary (ss. 1-2); II.—Mode of acquisition of land (ss. 3-12); III.—Compensation (ss. 13-29); IV.—Mortgages, charges, and leases (ss. 30-44); V.—Acquisition of property from a State (ss. 45-48); VI.—Miscellaneous (ss. 49-63).

Part II. empowers the Governor-General to agree with the owners (which includes "any person who under this Act is enabled to sell or convey land": s. 2) "of any land required for any public purpose, and with any State where such land is Crown land of the State, for the absolute purchase by the Commonwealth for a consideration in money or its equivalent of such land, or for the exchange of such land for any land of the Commonwealth" (s. 3); and also to acquire land compulsorily. S. 4 (adopting ss. 7 and 8 of the Imperial Lands Clauses Consolidation Act, 1845) (*i*) empowers parties under disability to sell and convey land to the Commonwealth for the purposes of the Act, and to make agreements for that purpose, and to release land from, and agree for the apportionment of, any rent-charge or incumbrance.

Ss. 6 to 12 provide for compulsory acquisition. The Governor-General may by notification declare that the land has been acquired (s. 6), and upon the publication of such notification in the *Gazette*, the land described shall vest in the Commonwealth, freed and discharged

(*h*) By the British General Postal Regulations (Post Office Guide, 1909, p. 14) a publication to be registered as a newspaper in the United Kingdom must be published in numbers at intervals of not more than seven days, and a supplement may consist of advertisements.

(*i*) 8 & 9 Vict. c. 18.

from all trusts, obligations, interests, easements, etc. (s. 7). In certain cases either House of Parliament may declare such notification to be void, and in such case the land shall be deemed not to have vested in the Commonwealth (s. 12). The owner of private land, or a State in respect of Crown land, shall be entitled to compensation (s. 9). S. 10 enacts that—

(1) For the purpose of constructing any underground work, land under the surface may be acquired under this Act without acquiring the surface.

(2) In such case no compensation shall be allowed or awarded unless (a) the surface of the overlying soil is disturbed; or (b) the support to such surface is destroyed or injuriously affected by the construction of the work; or (c) any mine, underground working, spring, reservoir, dam or well in or adjacent to such land is thereby injuriously affected.

This section appears to provide very inadequate compensation, and may lead to grave injustice. In some cases the owner may be deprived of property of great value underneath the surface, yet if it is not a "mine," or "underground working," etc., he may be left without compensation. It is obvious too that his land may be injuriously affected to the extent of thousands of pounds in ways for which this section makes no provision, and again he will be allowed no compensation. At the date of the notification, he may contemplate erecting a warehouse, or placing heavy machinery upon the land, but after the notification he will apparently not be entitled to support for such works, or to compensation for the loss of such support, unless the support to the surface is destroyed or injuriously affected.

Part III. deals with claims for compensation (ss. 13–14), the determination of the amount of compensation (ss. 15–19), and the payment and application of the purchase-money or compensation (ss. 20–29). From s. 13 it appears that no notice need be given to the owner until after the notification which vests his property in the Commonwealth has been published in the *Gazette*; and if he be absent from Australia or cannot be found, a copy of the notification with a plan of the land left with the occupier, or (if there is no occupier) affixed to some conspicuous part of the land, is sufficient notice to the owner. The Act therefore provides for nothing like the "notice to treat" under the Lands Clauses Consolidation Act, 1845 (*j*); and an option rests with the Government whether they treat with the owner to purchase the land, or take it compulsorily from him, not necessarily giving him any notice of the transaction until after they have acquired his land. Where the right to compensation or its amount is in dispute, the claimant may bring an action in the High Court, which shall be tried by a justice without a jury (ss. 15, 16). S. 17 enacts that—

(j) 8 & 9 Vict. c. 18.



(1) Unless the justice otherwise orders, if the judgment . . . is for a sum equal to or less than the amount of the valuation notified to the claimant, the claimant shall pay the costs of the action, but if for a greater sum or if for any sum where the right to any compensation is disputed, the Commonwealth shall pay such costs.

(2) If the judgment or award is for a sum one-third less than the amount of the valuation, the claimant shall pay the costs of the action.

(3) The justice before whom the action is tried shall in no case have power to direct a reference to arbitration, except by consent of the parties.

(4) Either party to the action may move for a new trial or to set aside the finding in accordance with the practice of the High Court.

Where the valuation of the claimant's interest and of the damage does not exceed £1000, the compensation shall, if the claimant so desires, be settled by arbitration; and if the sum awarded is one-third less than that claimed, all the costs are to be borne by him (s. 18).

Under Part V., where any Crown land of a State is acquired under this Act, or shall in future be acquired under s. 85 of the Constitution Act, the State shall, subject to the Constitution, be entitled to compensation for its value; but "the State shall not be entitled to compensation in respect of the loss of any rights of dominion, taxation, or revenue, or in respect of the severance of such land from any other land of the State, or in respect of any injury to any other land of the State" (ss. 45, 47).

Under Part VI., "the Minister, and all persons authorised by him, may enter upon the land of any person and the Crown land of any State, and may make surveys, take levels, sink pits, examine the soil, and do anything necessary for ascertaining whether the land is suitable for any public purpose," compensation being paid to the occupier for any damage done (s. 49). The Commonwealth may dispose of superfluous land (s. 51), and various powers are conferred, including power to take temporary possession of land (s. 53), and to make regulations for carrying the Act into effect (s. 63).

By s. 53 (3), "nothing in this Act contained shall exempt the Commonwealth, or any person sued on behalf of the Commonwealth, from an action for nuisance or other injury, if any, done in the exercise of the powers hereinbefore given to the land or habitation of any party other than the party whose land is so taken or used for any of the purposes aforesaid."

**Punishment of Offences (No. 14).**—This Act, which is to cease to have effect upon the establishment of the High Court (s. 1), enacts that—

the laws of each State respecting the arrest and custody of offenders, and the procedure for their summary conviction, or for their examination and commitment for trial on indictment or information, and for holding accused

persons to bail, shall apply and be applied, so far as they are applicable, to persons who are charged with offences against the laws of the Commonwealth committed within that State, or whose trial for offences committed elsewhere may lawfully be held therein (s. 2).

Jurisdiction is given to the several Courts, and with certain restrictions to the magistrates, of each State in respect of such offences (s. 3), and an appeal lies as from a conviction, judgment, sentence, or order in respect of an offence against the laws of that State (s. 4).

**Pacific Island Labourers** (No. 16). (*k*)—This is an Act to provide for the regulation, restriction, and prohibition of the introduction of labourers from the Pacific Islands. By s. 2, unless the contrary intention appears, the expression “ ‘Pacific Island labourers’ includes all natives not of European extraction of any island except the islands of New Zealand situated in the Pacific Ocean beyond the Commonwealth as constituted at the commencement of this Act, but does not include (1) persons registered under s. 11 of the Queensland Act, 47 Vict., No. 12, on the ground of continuous residence in Queensland for a period of not less than five years before September 1, 1884; or (2) persons employed as part of the crew of a ship; or (3) persons possessed of certificates of exemption under the Immigration Restriction Act, 1901 ” (*l*). No Pacific Island labourer shall enter Australia on or after March 31, 1904 (s. 3), nor before that date except under a licence (s. 4); and no licence shall be granted except as provided in this Act (s. 5). Nothing in the Act is to prevent the granting of licences as follows:—

(*a*) During 1902 to the number of not more than three-fourths of the number of such labourers who returned to their native islands in 1901;

(*b*) During 1903 to the number of not more than one-half of the number of such labourers who so returned in 1902 (s. 6).

No agreement for service under the Queensland Pacific Island Labourers Acts, 1880–1892, is to be made or remain in force after December 31, 1906 (s. 7). Such a labourer may before that date be brought before a Court of Summary Jurisdiction, and the Court, if satisfied that he is not and has not during the preceding month been employed under an agreement, shall order him to be, and he shall accordingly be, deported from Australia. After that date the Minister may order a Pacific Island labourer found in Australia to be, and he shall accordingly be, deported therefrom (s. 8). Any person who, contrary to the Act, introduces or allows such a labourer to enter Australia, or employs such a labourer except under an agreement, shall be liable to a penalty not exceeding £100 (s. 9). “In any proceeding

(*k*) See *infra*, p. 437.

(*l*) See *infra*, p. 414.



under this Act, a person alleged to be a Pacific Island labourer shall be deemed to be a Pacific Island labourer until the contrary is shown" (s. 10).

**Immigration Restriction (No. 17).** (*m*)—This Act is founded on the Immigration Restriction Act, 1897, of Natal, which was reproduced in Western Australia by the Act No. 13 of 1897, and was the basis of the New South Wales Act, No. 3 of 1898. (*n*) The prohibition of the present Act is more extensive even than that of Natal, and the following persons are by s. 3 declared to be "prohibited immigrants":—

- (*a*) Any person who when asked to do so by an officer fails to write out at dictation and sign in the presence of the officer a passage of fifty words in length in a European language directed by the officer; (*o*)
- (*b*) Any person likely in the opinion of the Minister or of an officer to become a charge upon the public or upon any public or charitable institution;
- (*c*) Any idiot or insane person;
- (*d*) Any person suffering from an infectious or contagious disease of a loathsome or dangerous character;
- (*e*) Any person who has within three years been convicted of an offence, not being a mere political offence, and has been sentenced to imprisonment for one year or longer therefor, and has not received a pardon;
- (*f*) Any prostitute or person living on the prostitution of others;
- (*g*) Any person under a contract or agreement to perform manual labour within the Commonwealth: Provided that this paragraph shall not apply to workmen exempted by the Minister for special skill required in Australia or to persons under contract or agreement to serve as part of the crew of a vessel engaged in the coasting trade in Australian waters, if the rates of wages specified therein are not lower than the rates ruling in the Commonwealth.

Certain exceptions are made in favour of (*h*) persons possessed of a certificate of exemption; (*i*) members of the King's regular land or sea forces; (*j*) the master and crew of a public vessel of any Government, or (*k*) of any other vessel during her stay in port; (*l*) persons duly accredited or sent on any special mission by any Government; (*m*) the wife and children under the age of eighteen accompanying a husband or parent respectively who is not a prohibited immigrant (but the exceptions under this paragraph may be suspended by proclamation); and

(*m*) See *infra*, p. 431.

(*n*) See *infra*, p. 439.

(*o*) This obviously provides a much severer test than the Natal Act, which merely required a person "to himself write out and sign, in the characters of any language of Europe, an application to the Colonial Secretary in the form set out in Schedule B of this Act."

(n) any person who satisfies an officer that he has formerly been domiciled in the Commonwealth or any of the component States.

A certificate of exemption shall be for a specified period only, and may be cancelled by the Minister (s. 4). Any immigrant evading an officer, or entering the country where no officer is stationed, may at any future time, and any immigrant may within one year after entering, be asked to comply with the requirements of s. 3(a), and if he fails to do so shall be deemed to be a prohibited immigrant offending against the Act (s. 5). Any immigrant prohibited within s. 3(a) only may, if thought fit by an officer, be allowed to enter or remain within the Commonwealth on depositing £100, to be returned upon his obtaining within thirty days from the Minister a certificate of exemption, or departing; otherwise such deposit to be forfeited, and he to be treated as a prohibited immigrant (s. 6). Every prohibited immigrant is to be liable, upon summary conviction, to six months' imprisonment, and by order of the Minister to be deported; provided that the imprisonment shall cease for the purpose of deportation, or if the offender finds two approved sureties each in £50 for his leaving the Commonwealth within one month (s. 7). Any person not a British subject, who is convicted of any crime of violence against the person, shall be liable on the expiration of any term of imprisonment imposed "to be required to write out at dictation, and sign in the presence of an officer, a passage of fifty words in length in an European language directed by the officer, and if he fails to do so shall be deemed to be a prohibited immigrant, and shall be deported" (s. 8). The master, owners, and charterers of any vessel from which a prohibited immigrant lands contrary to the Act shall be jointly and severally liable to a penalty not exceeding £100 for each such immigrant; provided that, if he be of European race, no penalty shall be imposed if the master, etc., prove satisfactorily that he had no knowledge of the immigrant being landed contrary to the Act, and that he took all reasonable precautions to prevent it (s. 9). The vessel from which such immigrant has, in the opinion of the officer, entered the Commonwealth may be detained, and if default is made in payment of any penalty be seized, condemned, and sold; the proceeds to be applied in payment of the penalty and all costs incurred, and the balance paid to the persons previously entitled to the vessel (s. 10). No agreement made with persons without Australia to perform manual labour within Australia, whereby they become prohibited immigrants within s. 3(g), shall have any effect (s. 11). Persons wilfully assisting another to contravene, or making or authorising any agreement the performance of which would be a contravention of the Act (s. 12), or who are wilfully instrumental in importing an idiot or insane person (s. 13), are mulcted in penalties. The Governor-General may make



regulations for carrying out the Act, and for empowering officers to determine whether any person is a prohibited immigrant (s. 16). Annual returns are to be made showing the number of persons refused admission, and the grounds on which admission was refused; the number of those who passed the test prescribed by s. 3 (a), and of those admitted without being asked to pass the test; and the nationality of all such persons respectively, and whence they came (s. 17). The penalty where no higher one is imposed shall not exceed £50, and in default imprisonment not exceeding three months (s. 18). The Act shall not apply to the immigration of Pacific Island labourers under the provisions of the Queensland Acts, 1880-1892 (s. 19).

### 1902 (p)

Acts passed—Public, 21.

**Introductory Observations.**—The seventeen Acts passed in 1901, together with the twenty-one Acts passed in 1902, comprise the legislative work effected during the first Session of the first Parliament of the Commonwealth. Of the twenty-one Acts of 1902, no fewer than twelve deal with Supply. Of the remaining nine, one deals with the Public Service (No. 5), two with Parliamentary Franchise (No. 8) and Elections (No. 19), two with Excise (No. 11) and Customs Tariff (No. 14), and one is a temporary measure—doubtless to be replaced by a permanent Statute—for enforcing claims against the Commonwealth (No. 21).

**Public Service (No. 5).**—This Act is divided into five parts—namely, I., Administration (ss. 5-14); II., Divisions of Public Service and Appointments (ss. 15-40); III., Internal Administration (ss. 41-50); IV., Life Assurance (ss. 51-58); V., Miscellaneous (ss. 59-80) (s. 4). Part I. provides for the appointment of a Commissioner and Inspectors, who are appointed for seven years, and who are only liable to be removed upon a resolution of Parliament (ss. 5, 6). No suit can be brought against the Commissioner or an Inspector for any nonfeasance or misfeasance in connection with his duties (s. 5 [5]). The duties of these officers include inspecting, examining, and reporting upon the various departments (ss. 8, 11). Part II. divides the public service into four divisions—administrative, professional, clerical, and general (s. 15); and as a general rule no person is to be admitted to the public service unless he is a natural-born or naturalised subject of His Majesty and has passed the examination prescribed (s. 26). Arrangements may be made for an officer of a State to perform duties for the Commonwealth, and *vice versa* (ss. 35-39). Part IV. provides generally that every officer must insure his life in the manner prescribed (ss. 51-58).

(p) Contributed by A. R. Butterworth, Esq.

Part V. deals with a number of miscellaneous matters, and empowers the Governor-General to make regulations for carrying out the provisions of the Act (s. 80).

**Parliamentary Franchise and Elections** (Nos. 8 and 19).—The Franchise Act (No. 8) provides for the franchise for the election of future Parliaments in the following manner :—

Subject to the disqualifications hereafter set out, all persons not under twenty-one years of age, whether male or female, married or unmarried, (1) who have lived in Australia for six months continuously ; and (2) who are natural-born or naturalised subjects of the King ; and (3) whose names are on the electoral roll for any electoral division ; shall be entitled to vote at the election of members of the Senate and the House of Representatives (s. 3).

The following are disqualified from voting : persons of unsound mind, or attainted of treason, or convicted and under sentence or subject to be sentenced for one year's imprisonment or longer, and aboriginal natives of Australia, Asia, Africa or the Islands of the Pacific, except New Zealand, unless entitled under s. 41 of the Constitution (*q*) (s. 4). No person shall be entitled to vote more than once at the same election (s. 5). This Act is to be incorporated with No. 19.

The Electoral Act (No. 19) is a long Act divided into seventeen parts, and contains two hundred and ten sections, with a schedule of forms ; and it makes elaborate provisions for regulating Parliamentary elections. Each State is to be distributed into electoral divisions equal in number to the number of members of the House of Representatives to be chosen therein, and one member of the House of Representatives is to be chosen in each division (s. 12) ; and a redistribution of any State into divisions is to be made whenever directed by the Governor-General (s. 23). Voting is to be by ballot, and provisions are made for sending ballot papers by post in case of absence, illness, etc. (ss. 109–122). Electoral expenses to be incurred or authorised by a candidate are limited in elections for the Senate to £250, and for the House of Representatives to £100 (s. 169). The Act defines and punishes various electoral offences (ss. 173–191), bribery or undue influence being punishable by a penalty not exceeding £200 or one year's imprisonment, and any other illegal practice by a penalty not exceeding £100 or six months' imprisonment (s. 181).

**Excise and Customs Tariff** (Nos. 11 and 14).—The first of these Acts

(*q*) S. 41 of the Constitution enacts that “no adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.”



imposes specified excise duties on beer, spirits, starch, sugar, and tobacco. The latter Act imposes various import duties on a very large number of articles specified.

**Royal Commissions** (No. 12).—This Act provides for summoning and examining witnesses, etc., before a Royal Commission.

**Post and Telegraph Rates** (No. 13).—This Act, to be incorporated with the Post and Telegraph Act, 1901, (r) imposes rates for postage of newspapers and for telegrams.

**Claims against the Commonwealth** (No. 21).—This is a temporary Act, expiring at the end of the year 1903. (s) It is based on similar Acts obtaining in various States for enforcing claims against the Government of the State. (t) A person "making any claim in contract or in tort against the Commonwealth, may set out the particulars of the claim in a petition to the Governor-General," who may appoint a nominal defendant on behalf of the Commonwealth (s. 2), against whom the petitioner may bring a "suit at law or in equity in the Supreme Court of the State in which the claim arose." The rights of the parties "shall as nearly as possible be the same, and judgment may be given and costs awarded on either side, as in an ordinary case between subject and subject" (s. 3). The nominal defendant shall not be individually liable, but damages and costs awarded to the plaintiff may be paid out of the Consolidated Revenue Fund by the Governor-General, who may perform any decree or order made (s. 5).

The Supreme Court of each State is hereby invested with federal jurisdiction for the purpose of hearing and determining actions and suits brought under this Act, and shall have that jurisdiction as a Court invested with federal jurisdiction and not otherwise (s. 6).

With respect to appeals, a special enactment is made by s. 7 :

In any action or suit brought under this Act, any appeal, or application for leave to appeal, from a decision of the Supreme Court of a State, which, in the opinion of the Attorney-General, involves a constitutional question, or a question of importance to the Commonwealth, shall on the application of the Attorney-General be postponed until a time not later than the date of expiration of this Act.

## 1903 (u)

## Acts passed—Public, 21.

**Introductory.**—The bulk of legislation in 1903 consisted of Money Acts. Other Statutes dealt with further provision for the election

(r) See *supra*, p. 409.

(s) See *infra*, p. 420.

(t) The first of such Acts was passed in New South Wales in 1857, and in Victoria in 1858.

(u) Contributed by Herman Cohen, Esq.

of senators (No. 2), the exercise of the judicial power of the Commonwealth (No. 6), practice and procedure of the High Court (No. 7), the amendment of the same (No. 13), the ratification of an agreement between the Admiralty, the Commonwealth and New Zealand relative to the naval force on the Australian Station, and the appropriation of moneys in pursuance thereof (No. 8), the publication of statutory rules (No. 18), the naval and military defence of the Commonwealth and its States (No. 20), and patents and inventions (No. 21).

**Judicature.**—Of these, by far the most important Acts legislatively are the two relating respectively to the judicial power of the Commonwealth and the practice and procedure of the High Court. Together they correspond broadly to the English Judicature Acts and the Orders and Rules of the Supreme Court; but, of course, there are innumerable *mutata mutanda*. Only the most important provisions can be noticed. The High Court consists of the Chief Justice and two other justices (s. 4); the qualification of a justice is *either* being a judge or ex-judge of a Supreme Court *or* being or having been a practising barrister or *solicitor*—N.B.—of not less than five years' standing (s. 5). The principal seat of the High Court is at the seat of Government (s. 10). A State Supreme Court has the *federal* jurisdiction of a High Court judge at *chambers*, unless the matter is within the exclusive jurisdiction of the High Court (s. 17). A full Court means at least two justices (s. 19). Appeals from Courts of a State from which, at the establishment of the Commonwealth, an appeal lay to the Sovereign in Council, must be heard by at least three justices (s. 21); so must applications for leave to appeal to the King in Council on constitutional questions between the Commonwealth and a State or between States *inter se* (s. 22).

If a full Court is equally divided in opinion, the opinion of the Chief Justice (or, if he is absent, of the senior) is to prevail, but where a State judge had exercised *federal* jurisdiction, his decision is to be affirmed, unless the latter expressly requests "that the matter shall be determined without reference to the fact that he has pronounced or given the decision" (s. 23). S. 24 is a remarkable instance of legislation by incorporation: "The High Court shall have the same power to punish contempts of its power and authority as is possessed at the commencement of this Act by the Supreme Court of Judicature in England." The High Court is to have original jurisdiction "in all matters arising under the constitution or involving its interpretation" (s. 30).

The fusion of law and equity is provided for by s. 32, which is closely modelled on sub-s. 7 of the memorable s. 24 of the English Judicature Act. (x) Generally, there cannot be appeals from Supreme Courts

(x) 36 & 37 Vict. c. 66.



to the High Court where the matter at stake is worth less than £300 (s. 35). The High Court has exclusive jurisdiction in "matters arising directly under any treaty," suits between States, suits between the Commonwealth and a State, and "matters in which a writ of mandamus or prohibition is sought against an officer of the Commonwealth or a federal Court" (s. 38). It may grant leave to appeal to itself, though State law prohibits such appeal (s. 39, *c.*). The salary of the Chief Justice is £3,500 per annum that of the puisnes £3,000 (s. 47); travelling expenses are allowed to the extent the Governor-General considers reasonable (*ibid.*). The High Court may for good reason strike off the name of any barrister or solicitor from the register (s. 49). The executive officer of the High Court shall be called the Marshal (s. 53).

Part IX. (ss. 56-67) is entitled "Suits by and against the Commonwealth and the States." (*y*) S. 64 expressly enacts that in such suits "the rights of the parties shall as nearly as possible be the same . . . as in a suit between subject and subject." But execution or attachment cannot issue against the property or revenues of Commonwealth or State (s. 65).

Indictable offences against the Commonwealth are to be prosecuted in the name of the Attorney-General "or of such other person as the Governor-General appoints in that behalf," such appointment to be "by commission in the King's name" (s. 69, 1 and 2). In the next sub-section is the echo of English legislation:—(*z*)

(3) Any person committed for trial for an indictable offence against the laws of the Commonwealth may at any time within fourteen days after committal and before the jury is sworn apply to a justice in chambers or to a judge of the Supreme Court of a State for the appointment of counsel for his defence. If it be found to the satisfaction of the justice or judge that such person is without adequate means to provide defence for himself, and that it is desirable in the interests of justice that such an appointment should be made, the justice or judge shall certify this to the Attorney-General, who may, if he thinks fit, thereupon cause arrangements to be made for the defence of the accused person. Upon committal the person committed shall be supplied with a copy of this sub-section.

As to criminal appeals, ss. 72-3 provide a machinery pretty much like that which existed in the Court for Crown Cases Reserved. There is no appeal on a question of fact (unless it is given by s. 77, which empowers the High Court to give *special* leave to appeal to itself), but (*semble*) the trying Court is bound to reserve any question of law on the application of the defence made before verdict, and may do so at any time in its discretion, for a full Court (High or Supreme). The

(*y*) See *supra*, p. 418.

(*z*) See 3 Edw. VII. c. 38, *supra*, p. 102.

Court of Appeal may (*inter alia*) "amend the judgment or . . . make such other order as justice requires," which seems to imply the power of increasing or decreasing the sentence. History and tradition have inspired the following section :—

So far as the laws of the Commonwealth are not applicable, or so far as their provisions are insufficient to carry them into effect, or to provide adequate remedies or punishment, the common law of England as modified by the constitution and by the Statute law in force in the State in which the Court in which the jurisdiction is exercised is held shall, so far as it is applicable and not inconsistent with the constitution and the laws of the Commonwealth, govern all Courts exercising federal jurisdiction in the exercise of their jurisdiction in civil and criminal matters (s. 80).

Finally, the justices of the High Court may make Rules of Court for carrying this Act into effect (s. 86), but every Rule so made must be laid before Parliament, *i.e.* of the Commonwealth, and on an address of either House within forty days of its being so laid the Governor-General may annul it (s. 87).

Supplementary to this Act (No. 6) and "assented to" almost on the same day is the

**High Court Procedure Act** (No. 7), by far the largest part of which consists of the schedule containing the Rules of Court, distributed under forty-nine orders as to original jurisdiction and in four sections on the appellate jurisdiction, with an appendix of nine forms. A very simple machinery is provided by the Act (ss. 32–4) to prevent clashing between it and the powers conferred on the judges by the Judiciary Act (s. 86, cited above) to make Rules of Court : (it is not quite clear, but it seems that) they may amend any Rule in the schedule—in short, they are to prevail over the Statute.

Little in the Act itself calls for special notice. There is to be a seal, inscribed as "The Seal of the High Court of Australia," in the custody of the Chief Justice (s. 3). All writs, etc., issued from the High Court are to be in the name of the King (s. 4). There is provision for transmitting in an urgent case documents from a district registry to any other by telegraph on payment by the party of the expense incurred (s. 9), and the order made in such a case may be notified to the district registry in the same way, "and thereupon, and without waiting for receipt of the order, full effect shall be given to the order" (s. 10). The general rule is trial without a jury (s. 12). The modern unpopularity of technicality is illustrated by s. 24, which runs :—

(1) No proceedings in the High Court shall be invalidated by any formal defect or by any irregularity, unless the Court is of opinion that substantial



injustice has been caused thereby and that the injustice cannot be remedied by an order of the Court.

(2) The Court or a justice may make an order declaring that any proceeding is valid notwithstanding any such defect or irregularity.

**Rules Publication Act** (No. 18).—Provision is made (*inter alia*) for the publication in the *Gazette* of draft rules made not only in reference to the Courts of Justice, but “by the Governor-General, or any Minister, or the Inter-State Commission, or any Government department” (s. 2).

**Defence Act** (No. 20). (a)—This Statute is of paramount interest in view of recent and future political developments. A few characteristic points may be noticed.

In the definition section (4) “Minister” means Minister of State for Defence; “war means any invasion or apprehended invasion of, or attack or apprehended attack on the Commonwealth, or any territory under the control of the Commonwealth, by an enemy or armed force.”

The Governor-General may appoint the chief military or naval commander from the King’s “regular forces,” or from the Defence Force, and appoint and promote officers of the latter (s. 8). “In the first appointment of officers preference shall be given, in the case of equality of qualifications, to persons who have served in the Defence Force for three years without a commission” (s. 11). No civil contract between officer and King or Commonwealth is hereby created (s. 13). No one is to be appointed an officer unless he has passed the prescribed examination, but the Governor-General may exempt an officer of the King’s regular forces (s. 14) or any one for distinguished services (s. 22). Appointments are during the pleasure of the Governor-General, but no officer is to be dismissed without being heard (s. 16). Warrant-officers and “non-coms.” are to be appointed by superior officers (s. 18). The Governor-General places officers of the permanent forces (see *infra*) on a half-pay list; if after a year they remain unemployed, they must go on the unattached list (s. 23), on which, too, the Governor-General may place officers of the Defence Force (s. 24); he may also form a reserve list (s. 25), and may place officers on retired lists (s. 26). He “may appoint a Board of Advice to advise on all matters relating to the Defence Force submitted to it by the Minister” (s. 28). He may establish a naval and military college (s. 29).

The Defence Force is divided into two branches, “the permanent forces and the citizen forces” (s. 30). “No permanent military forces shall be raised, maintained, or organised except for administrative and instructional staffs, including Army Service, Medical and Ordnance

(a) See *infra*, p. 430.

Staffs, Garrison Artillery, Fortress Engineers, and Submarine Mining Engineers" (s. 31). The citizen forces are divided into militia, volunteer, and reserve. Volunteers are defined to be "not ordinarily paid for their service in times of peace." The reserve consists of "(1) members of rifle clubs, constituted as prescribed . . . ; (2) persons who, having served in the active forces or otherwise, as is prescribed, . . . are enrolled as members" (s. 32). Subject to this Act, the Governor-General may raise the forces he deems necessary "for the defence and protection of the Commonwealth and of the several States" (s. 34). Enlistment is for three years—except in the volunteers and reserve, where it is for two (s. 36), but there are provisions for buying out or earlier discharge (ss. 40–41). The Governor-General may disband any corps or part (s. 44). He may call out the citizen forces for active service in time of war (s. 46). The naval forces are bound to serve outside the Commonwealth for "training or in time of war for . . . defence, etc." (s. 48), but the military forces are not so bound unless they voluntarily agree (s. 49). By s. 51, where "domestic violence" has been proclaimed to exist in a State, the Governor-General may, "upon the application of the Executive Government of the State," send troops thither to protect it (s. 51). For training or in war the naval forces of the Commonwealth may be sent aboard the King's ships on the Australian Station and be subject to British naval law (s. 54). "The military forces shall . . . on active service be subject to the Army Act (Imperial) save so far as it is inconsistent with this Act" (s. 55), and so the Navy, *mutatis mutandis* (s. 56).

Voluntary enlistment is the general rule (s. 35), but "all male-inhabitants of Australia (excepting those who are exempt from service in the Defence Force) who have resided therein for six months and are British subjects and are between the ages of eighteen and sixty years shall, in time of war, be liable to serve in the militia forces" (s. 59). But there is an order in liability to such service, viz. (1) unmarried men or widowers without children between eighteen and thirty; (2) ditto between thirty and forty-five; (3) married men or widowers with children between eighteen and forty-five; (4) all men between forty-five and sixty. Parliament if not sitting when the militia is called out, must be summoned within ten days (s. 60). "Persons whom the doctrines of their religion forbid to bear arms or perform military service shall be exempt upon such conditions as may be prescribed" (s. 61). The Governor-General has power to form cadet corps, naval and military, of youths between the ages of twelve and fourteen (s. 62).

Part VI. deals with special powers in relation to defence, and gives the Governor-General great control over the railways, especially in



time of war (s. 64), when, too, there may be billeting and quartering except in houses "solely occupied by women or by women and children" (s. 68). Under "Offences" (Part VII.) there is created the statutory offence of a "contractor, purveyor, or other person" fraudulently supplying inferior provisions, material, equipment, etc.; it is punishable on indictment by three years' imprisonment with or without hard labour (s. 73, 6). Sketching, drawing, photographing, etc., fortifications or other works of defence may be punished by a fine of £100 or six months' imprisonment without any option (s. 82, 1). There is a penalty of £20 for bringing contempt on the uniform (s. 84). Courts-martial are provided for in Part VIII. Little here calls for remark, but s. 96 may be noted: "if the offence charged be punishable by death," the prisoner "shall be entitled to be defended by counsel at the expense of the Crown"—which applies to any offence under this Act (s. 103). Such offences may be tried either by court-martial or by a civil Court (s. 102). Nothing in this Act is to prevent any member of the Defence Force from volunteering to serve in the King's forces beyond the Commonwealth (s. 117). The power of making regulations, generally, is vested in the Governor-General (s. 124). *Inter alia*, he may fix the amount and nature of the security which officers and others holding positions ought in the opinion of the Minister to give for their fidelity (*ibid.*, *e*) and he may prescribe "the insurance of their lives by married members of the permanent forces for the benefit of their wives and families" (*ibid.*, *h*).

**Navy** (No. 8).—The interest of this Statute—the Naval Agreement Act—lies in the schedule which recites an agreement (not, *semble*, published elsewhere) between His Majesty's Government and the Commonwealth and New Zealand, the preamble of which states that the parties "having recognised the importance of sea power in the control which it gives over sea communications, the necessity of a single navy under one authority, by which alone concerted action can be assured, and the advantages which will be derived from developing the sea power of Australia and New Zealand," have made this agreement. It is emphatically an Imperial document. The Act formally appropriates money in pursuance of it.

**Naturalisation.**—Recognition is accorded to certificates of naturalisation granted by the States. No. 11 further enacts that—

A person resident in the Commonwealth, not being a British subject, and not being an aboriginal native of Asia, Africa, or the islands of the Pacific, excepting New Zealand, who intends to settle in the Commonwealth, and who—

(a) has resided in Australia continuously for two years immediately preceding the application, or

(b) has obtained in the United Kingdom a certificate of naturalisation or letters of naturalisation, may apply to the Governor-General for a certificate of naturalisation (s. 5).

In order to obtain a certificate under sub-section (a) the applicant must make a declaration stating his name, age, birth-place, occupation, and residence, the length of his residence in Australia, and that he intends to settle in the Commonwealth, and present a certificate signed by a justice of the peace, a postmaster, a teacher of a State school, or an officer of police, that the applicant is known to him, and is a person of good repute.

A naturalised person is entitled to all political and other rights, powers, and privileges of a British-born subject. A woman, not being a British subject, who marries a British subject is naturalised thereby.

An infant not being a natural-born British subject—

- (a) whose father, or whose mother (being a widow or divorced), has obtained a certificate of naturalisation, or
- (b) whose mother is married to a natural-born British subject, or to a person who has obtained a certificate of naturalisation, and who has at any time resided in Australia with such father or mother, has all the rights and privileges of a British-born subject.

From the passing of this Act, the right to issue certificates of naturalisation is vested solely in the Commonwealth Government.

**Extradition.**—No. 12 applies the Extradition Acts to the Commonwealth as a whole, and vests the authority in regard to them in the Commonwealth Government.

**Patents** (No. 21) (b).—This Act is avowedly founded on the English Patents, Designs, and Trade Marks Act, 1883, (c) and succeeding Acts. (d) A commissioner has chief control of the Department of Patents “under the Minister” (s. 10). Any person “whether a British subject or not” may apply for a patent (s. 32). The term of a patent is fourteen years (s. 64). “A patent shall to all intents have the like effect against the King as it has against a subject” (s. 92). The Commonwealth or a State may acquire patents compulsorily (ss. 93, 94). A new class of “patent attorneys” is created (s. 101). It may be added that the fifty-years’ rule of the English Patents Act, 1902, (e) is here (ss. 60, 89) applied, with the limitation of the use of the prior patent *to Australia*.

(b) See *infra*, p. 437.

(c) 46 & 47 Vict. c. 57.

(d) See now 7 Edw. VII. c. 29, *supra*, p. 155.

(e) 2 Edw. VII. c. 34, ss. 1, 2, *supra*, p. 98.



1904 (*f*)

Acts passed—Public, 15.

Commonwealth legislation for 1904 consists almost wholly of Acts of Supply or of Appropriation.

**Interpretation of Acts.**—No. 1 is a statute “for the Interpretation of Acts of Parliament, and for Further Shortening their Language,” but some sections have an interest much greater than is usually found in such enactments. Thus s. 4 runs: “Offences against any Act which are punishable by imprisonment for a period exceeding six months shall, unless the contrary intention appears in the Act, be indictable offences.” Conversely, statutory offences not so punishable or not punishable by imprisonment and not declared to be indictable are within summary jurisdiction, unless it is otherwise enacted. Another innovation is s. 8, viz. “Any attempt to commit an offence against any Act shall, unless the contrary intention appears in the Act, be an offence against the Act, punishable as if the offence had been committed.” Obviously it was intended expressly to exclude the common law.

**Seat of Government** (No. 7).—This Act determines that the seat of Government shall be within seventeen miles of Dalgety in New South Wales. The Federal territory within which it is situated is to contain not less than nine hundred square miles, and to have access to the sea.

**Industrial Arbitration.**—The Commonwealth Conciliation and Arbitration Act (No. 13)—a trade union code—is the chief legislative work of the year. The title limits it to “disputes extending beyond the limits of any one State.” It is a landmark in the history of the Commonwealth. The keynote is struck in s. 6 (1), which runs:

No person or organisation shall, on account of any industrial dispute, do anything in the nature of a lock-out or strike, or continue any lock-out or strike. Penalty, one thousand pounds.

The chief objects are categorically set out in an early section (2)—a method not used in this country—thus:

- I. To prevent lock-outs and strikes in relation to industrial disputes.
- II. To constitute a Commonwealth Court of Conciliation and Arbitration having jurisdiction for the prevention and settlement of industrial disputes.
- III. To provide for the exercise of the jurisdiction of the Court by conciliation with a view to amicable agreement between the parties.
- IV. In default of amicable agreement between the parties, to provide for the exercise of the jurisdiction of the Court by equitable award.
- V. To enable States to refer industrial disputes to the Court, and to

(*f*) Contributed by Herman Cohen, Esq.

permit the working of the Court and of State Industrial Authorities in aid of each other.

VI. To facilitate and encourage the organisation of representative bodies of employers and of employees and the submission of industrial disputes to the Court by organisations, and to permit representative bodies of employers and of employees to be declared organisations for the purposes of this Act.

VII. To provide for the making and enforcement of industrial agreements between employers and employees in relation to industrial disputes.

In the definition section (4) "industrial dispute" means not only what might be expected from the words, but also "a dispute in relation to industrial matters certified by the registrar as proper in the public interest to be dealt with by the Court;" but disputes in agricultural, viticultural, horticultural, or dairying pursuits are excluded. "Organisation" means a registered body.

By s. 6 (2) proceedings for the penalty (s. 6 [1], *supra*) can only be taken by leave of the President of the Court. That section does not apply to anything done "for good cause independent of the industrial dispute," but the onus to show this state of things is on the defendant (s. 6 [3]). Employers or employees refusing to offer or accept employment upon the terms of an "industrial agreement," without reasonable cause or excuse, are guilty of a lock-out or strike (s. 7). Any organisation *ordering* its members to refuse to offer or accept employment for the purpose of enforcing compliance with the demands of employers or employed are so guilty (s. 8). Employers are not to dismiss employed merely because the latter is a member of an organisation or is entitled to the benefit of an industrial agreement, under a penalty of £20, and the onus is on the employer to show that he did not do so. SS. 9 and 10 provide the converse as to employed ceasing work.

Part III. (ss. 11-43) constitutes and regulates the Conciliation and Arbitration Court. It is to be a Court of Record and consist of one judge of the High Court, but he may appoint another as deputy. After seven years he may be reappointed, and can only be removed on addresses from both Houses to the Governor-General "on the ground of proved misbehaviour or incapacity" (s. 12 [1]).

S. 16 borrows a hint from French procedure :

The President shall be charged with the duty of endeavouring at all times by all lawful ways and means to reconcile the parties to industrial disputes and to prevent and settle industrial disputes, whether or not the Court has cognisance of them, in all cases in which it appears to him that his mediation is desirable in the public interest.

The Court may supersede any State industrial authority dealing with an industrial dispute (s. 20). In case of inconsistency between



a Commonwealth and a State award the former shall prevail (s. 30). S. 22 secures that, as a general rule, no organisation can take an industrial dispute into Court without the consent of its members.

S. 25 states that in every case "the Court shall act according to equity, good conscience, and the substantial merits of the case, without regard to technicalities or legal forms, and shall not be bound by any rules of evidence, but may inform its mind on any matter in such manner as it thinks just." There is no appeal from the Court, but the President may state a case for the opinion of the High Court (s. 31). Security up to £200 may be demanded from any organisation bringing a dispute to the Court (s. 33). Assessors (presumably technical) may be appointed, one having common interests with employers and one with employed. Very large powers are conferred on the Court, including that of laying down a common rule for the future of an industry, by s. 38.

The Court may "prescribe a minimum rate of wages or remuneration," and if it does, must, if asked, appoint some tribunal to fix "a lower rate in the case of employees who are unable to earn the minimum wage so prescribed," and may "direct that as between members of organisations of employers or employees and other persons offering or desiring service or employment at the same time, preference shall be given to such members, other things being equal" (but such preference is hedged with many qualifications), and may "appoint a tribunal to finally decide in what cases an employer or employee to whom any such direction applies may employ or be employed by a person who is not a member of any such organisation" (s. 40). The President or duly authorised persons may inspect any work-place (including ships, etc.), the industry of or in which is the subject of dispute or where "any offence against this Act is suspected" (s. 41). Breaches of award or orders may be punished summarily (s. 44), and the penalties therefor may go either to the Consolidated Revenue Fund or to an organisation or person (s. 45). The *Taff Vale* case (g) must have been present to the mind of the framer of s. 47, which enables "the property of any organisation or in which any organisation has a beneficial interest, whether vested in trustees or howsoever otherwise held," to be "hit." Where execution on such property is insufficient, the members are liable to a defined extent. For certain offences (generally, in the direction of obstructing industrial peace) the Court may deprive the offender of any benefits under this Act, may remove him from his position in his organisation, and prevent any payment to him from the funds thereof (s. 50). There may be a principal registry for

(g) *Taff Vale Railway Co. v. Amalgamated Society of Railway Servants*, [1901] A. C. 426.

organisations (s. 51) at the seat of government, and district registries in each capital (s. 52).

Registration (ss. 55-60, Schedule B) is broadly on the lines of English Trade Union Acts, but there are vital differences. Employers must have employed on a monthly average a hundred persons in the aggregate in the given industry for the six months preceding before they can register their association, and not less than a hundred employees can register; no organisation can get any "preference" (see *supra*) so long as its funds may be applied to "political purposes" or its members are *required* "to do anything of a political character." But "political purposes" do not include "obtaining or maintaining provisions applying to all persons in any particular industry" *without distinction between* union and non-union workers (as we should say) in respect of matters generally known here as "Factory Legislation," but including "the remuneration of labour," "protection of salaries and wages," "other conditions similarly affecting employment" (s. 55). Registration may be refused if members "might conveniently belong" to an organisation already registered in the State (s. 59).

The registrar may apply to cancel registration in a wide range of cases, implying his right to take cognisance of the internal affairs of the organisation, *e.g.* if the rules "have not been *bonâ fide* observed," or "do not provide reasonable facilities for the admission of new members . . . or are in any way tyrannical or oppressive" (s. 60). The Governor-General may proclaim "any association" and thus make it an "organisation" under this Act (s. 62). Organisations can only be sued for penalties in this Court, when it has jurisdiction (s. 67). But organisations may sue members for anything due under the rules in a court of summary jurisdiction (s. 68). Disputes between organisations and a member are to be decided under the rules: the Court may order any member to contribute—up to £10—to any sum which the Court has ordered the organisation to pay (s. 69). The Court may strike a member off the list (s. 70). "Industrial Agreements" may be made by any organisation with any other "or with any person for the prevention and settlement of industrial disputes by conciliation and arbitration" (s. 73), for not more than three years (s. 75), but if no time is limited, then until notice by some party (s. 81). Duplicates must be filed with the registrar (s. 76). Penalties for breach of such agreements (if not fixed therein): by organisations up to £500, by employers £250, by employees £10 (s. 78). No judge is bound to accept any appointment under this Act (s. 82). (1) "No evidence relating to any trade secret, or to the profits or financial position of any witness or party, shall be disclosed except to the Court or published without the consent of the person entitled to the trade secret or non-disclosure. Penalty:



five hundred pounds or three months' imprisonment." (2) "All such evidence shall, if the witness or party so requests, be taken in private" (s. 85). Contents of books and documents in evidence are not to be made public without the permission of the Court (s. 86). Persons or organisations "directly or indirectly concerned" in any offence against this Act or counselling, taking part, or encouraging such are deemed to have committed that offence (s. 87). Despite a provision of Act No. 1 (*supra*) it is enacted that an attempt to commit an offence against this Act is deemed that offence (s. 88). The Governor-General may make regulations (not inconsistent with the Act): among others, those "necessary or convenient to be prescribed for giving effect to this Act."

**Defence.**—All other Acts of 1904 are financial except No. 12, which amends the Defence Act of 1903. (*h*) In an Appendix to the 1904 Statutes the Act of 1903, *as amended* by this of 1904, is printed—a very convenient method in important Statutes. The amendments are not of general interest.

## 1905 (*i*)

Acts passed—Public, 26.

**Jury.**—No. 2 is a Jury Exemption Act. Only public functionaries are exempt (in Commonwealth or State): the non-exemption of professional men is conspicuous.

**Evidence Act** (No. 4).—This deals with the formal proof of documents, proceedings, etc., very much on English lines.

**Service and Execution of Process Act** (No. 5) provides for the issue of "provisional warrants" of arrest in the absence of the original warrant, which must, however, be produced within a reasonable time.

**Wireless Telegraphy.**—No. 8 is a code to secure the Postmaster-General's monopoly. It does not apply to the King's Navy.

**Papua Act.**—No. 9 is to "provide for the acceptance of British New Guinea as a territory under the authority of the Commonwealth, and for the Government thereof." It seems that this measure was necessitated by an event which is the first of its kind in the history of the Commonwealth—the facts leading up to which are recited in a long preamble—and that there is no British precedent for such a Statute. The constitutional arrangements have a resemblance to those existing in the West African possessions. At present the white resident population appears to be less than two thousand; only they have the franchise. There are severe penalties for supplying natives with intoxicants except for medical purposes. No freeholds are to be granted on the land.

**Secret Commissions Act** (No. 10) contains very drastic provisions against dishonest agents. The penalty is £1000 when the principal is

(*h*) See *supra*, p. 422.

(*i*) Contributed by Herman Cohen, Esq.

a corporation, and £500, or two years' imprisonment, or both, in the case of any other "person." A conviction is to be no bar to civil proceedings for the recovery of the amount of the secret gift from the agent or its equivalent from the giver.

**The Representation Act** (No. 11) provides that the Chief Electoral Officer of the Commonwealth shall determine the numbers of the population of each State and of the Commonwealth practically according to a decennial census in each State (see No. 15), with a quinquennial revision, and upon the basis of those numbers the number of members of the House of Representatives in each State.

**Insurance.**—The Life Assurance Companies Act (No. 12) is evidently aimed at the same evils connected with the assurance of infant life as have arisen in this country. The highest amount payable is that upon death between nine and ten years—viz. £45.

**Census.**—No. 15 is a Census and Statistics Act. The Census is to be taken decennially after 1911. The particulars to be returned include the religion and education of every person, "sickness or infirmity," "the material of the dwelling, and the number of rooms" therein, and are decidedly inquisitorial. The "Statistician" is the chief Census officer, and is bound to collect annually a great mass of economic statistics.

**Commerce (Trade Descriptions) Act** (No. 16).—This is the Australasian Merchandise Marks Act.

**Immigration Restriction Amendment Act** (No. 17).—The principal Act (1901) (*k*) gives effect to the well-known policy of the Commonwealth in this behalf. The resultant Act, *as amended*, is conveniently set out in the Appendix.

**Victoria Memorial.**—No. 18 provides for a contribution of £25,000 towards a Memorial to her late Majesty.

**Contract Immigrants Act** (No. 19).—The keynote is in s. 4, which runs: "Every contract immigrant, unless otherwise prohibited by law, may land in the Commonwealth if the contract is in writing and is made by or on behalf of some person named in the contract and resident in Australia, and its terms are approved by the Minister" (for External Affairs). Its effect on the Immigration Restriction Act (*l*) is set out in the amended form of that Act printed in the Appendix.

**Trade Marks.**—No. 20 is a Trade Marks code in which English Statutes have been freely used, as is acknowledged in many references in the margin.

**Sugar Bounty.**—No. 23 provides for a bounty to growers of sugarcane and beet.

**Copyright Act** (No. 25) is singularly well drawn and complete.

(*k*) See *supra*, p. 414.

(*l*) See No. 17, *supra*.



The draftsman has profited by the mass of British case-law on the subject. The protection of International Copyright in the Commonwealth purports to be secured by two sections in Part VI., but on this most difficult of all legal topics only a specialist lawyer could say whether the Statute is adequate.

**Commonwealth Electoral Act** (No. 26) is the last of the series. It, too, is set out in its final amended form in the Appendix. The details are more or less those of our Ballot and Corrupt Practices Acts, but an English reader is struck by the possibility of "voting by post" and the legislation for elections to the Senate.

### 1906 (*m*)

Acts passed—Public, 23.

The Parliament of the Commonwealth has been chiefly engaged this year in voting supplies and revising tariffs; but it has found time to pass some important measures dealing with meteorology, designs, land acquisition, the referendum and, above all, the preservation of Australian industries.

**Meteorology** (No. 3).—This Act empowers the Governor-General to establish observatories for the purposes of meteorological observations and to appoint a Commonwealth Meteorologist, and this officer is to be charged with the following duties:—

- (a) The taking and recording of meteorological observations ;
- (b) The forecasting of weather ;
- (c) The issue of storm warnings ;
- (d) The display of weather and flood signals ;
- (e) The display of frost and cold-wave signals ;
- (f) The distribution of meteorological information ;
- (g) Such other duties as are prescribed to give effect to the provisions of the Act.

Arrangements may be made by the Governor-General with the States Government for the transfer to the Commonwealth of State observatories, the recording of meteorological observations by State officers, and the interchange of meteorological information.

**Copyright in Industrial Designs** (No. 4).—The State Designs Acts of each State are in future, by this Act, to be administered by the Commonwealth. A Central Designs Office is established, with a seal and a sub-officer in each State, and a Registrar of Designs is appointed.

Any new and original design which has not been published in Australia may be registered under the Act. The applicant for registration must pay a fee and must furnish the registrar with the prescribed number of drawings, photographs, tracings, exact representations or

(*m*) Contributed by Herman Cohen, Esq.

specimens of the design. The author of a design is to be the first owner, and is to be the person entitled to make application for registration. Where the design is made on behalf of any person for valuable consideration, he is to be deemed the author of the design. If the registrar registers the design he is to issue a certificate to the applicant. If the registrar refuses registration, the applicant may appeal to the Law Officer. The owner of a registered design must, within two years after registration, substantially use the design in Australia, otherwise his copyright ceases.

Damages for infringement are not to be awarded unless the Court is satisfied that the infringer infringed knowingly or after notice of the subsistence of copyright.

Power is given to the Supreme Court to order rectification of the register. The Act concludes by providing for an international arrangement.

If the King is pleased to apply to the Commonwealth any law of the United Kingdom for carrying into effect any arrangement made with the Government of any foreign State for the mutual protection of designs, then any person who has applied for protection for any design in the United Kingdom or the Isle of Man, or in any foreign State with which the arrangement has been made, shall be entitled to registration of his design under this Act in priority to any other applicant, and such registration shall have the same date as the date of the original application in the United Kingdom, or the Isle of Man or such foreign State as the case may be (s. 48).

Where it is made to appear to the Governor-General that any British Possession has made satisfactory provision for the protection in that Possession of designs registered in the Commonwealth, the Governor-General may by Order apply all or any of the provisions of the last preceding section, with such variations or additions (if any) as to him seem fit, to designs registered in that British Possession (s. 49).

**Preservation of Australian Industries (No. 9).**—The chief mischiefs at which this Act is aimed are (1) Monopolies, (2) Dumping. With regard to the former the Act provides as follows:—

S. 4 (1). Any person who, either as principal or as agent, makes or enters into any contract, or is or continues to be a member of or engages in any combination, in relation to trade or commerce with any other country or among the States:

- (a) with intent to restrain trade or commerce to the detriment of the public; or
- (b) with intent to destroy or injure by means of unfair competition any Australian industry the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers, is guilty of an offence. Penalty, five hundred pounds.



(2) Every contract made or entered into in contravention of this section shall be absolutely illegal and void.

S. 5 (1). Any foreign Corporation, or trading or financial Corporation formed within the Commonwealth, which, either as principal or agent, makes or enters into any contract, or engages or continues in any combination :

- (a) With intent to restrain trade or commerce within the Commonwealth, to the detriment of the public ; or
- (b) With intent to destroy or injure by means of unfair competition any Australian industry the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers, is guilty of an offence. Penalty, five hundred pounds.

(2) Every contract made or entered into in contravention of this section shall be absolutely illegal and void.

S. 6 then goes on to define what is "unfair competition."

(1) Unfair competition means competition which is unfair in the circumstances ; and in the following cases the competition shall be deemed to be unfair unless the contrary is proved :

- (a) If the defendant is a commercial trust ;
- (b) If the competition would probably or does in fact result in an inadequate remuneration for labour in the Australian industry ;
- (c) If the competition would probably or does in fact result in creating substantial disorganisation in Australian industry or throwing workers out of employment ;
- (d) If the defendant with respect to any goods or services which are the subject of the competition, gives, offers, or promises to any person any rebate, refund, discount, or reward upon condition that that person deals, or in consideration of that person having dealt, with the defendant, to the exclusion of other persons dealing in similar goods or services.

(2) In determining whether the competition is unfair, regard shall be had to the management, the processes, the plant, and the machinery employed or adopted in the Australian industry affected by the competition being reasonably efficient, effective, and up to date.

By s. 7 "any person who monopolises or attempts to monopolise, or combines or conspires with any other person to monopolise, any part of the trade or commerce with other countries or among the States, with intent to control, to the detriment of the public, the supply or price of any service, merchandise, or commodity is guilty of an offence. Penalty, five hundred pounds."

There is a similar provision in s. 8 directed against foreign corporations. The Attorney-General may institute proceedings to restrain by injunction the carrying out of any contract which is in restraint of trade or injurious by reason of unfair competition. Any person injured

in his person or property by anything done in contravention of this part of the Act may recover treble damage for the injury.

No criminal proceeding is to be instituted except by the Attorney-General or some person authorised by him.

The third part of the Act deals with the prevention of “dumping.” Competition for this purpose “is to be deemed unfair, unless the contrary is proved, if—

- (a) Under ordinary circumstances of trade it [the importation] would probably lead to the Australian goods being no longer produced, or being withdrawn from the market, or being sold at a loss, unless produced at an inadequate remuneration for labour; or
- (b) The means adopted by the person importing or selling the imported goods are, in the opinion of the Comptroller-General or a Justice, as the case may be, unfair in the circumstances; or
- (c) The competition would probably, or does in fact result in an inadequate remuneration for labour in the Australian industry; or,
- (d) The competition would probably or does in fact, result in creating any substantial disorganisation in Australian industry or throwing workers out of employment;
- (e) The imported goods have been purchased abroad by or for the importer, from the manufacturer or some person acting for or in combination with him, or accounting to him at prices greatly below their ordinary cost of production where produced, or market price where purchased; or,
- (f) The imported goods are imported by or for the manufacturer or some person acting for or in combination with him, or accounting to him, and are being sold in Australia at a price which is less than gives the person importing or selling them a fair profit upon their fair foreign market value, or their fair selling value if sold in the country of production, together with all charges after shipment from the place where the goods are exported directly to Australia (including Customs duty).

On receipt of a complaint of “dumping,” the Comptroller-General of Customs is to certify the Minister, who may thereupon refer to a justice of the High Court the investigation and determination of the question whether the imported goods are being imported with the alleged intent. Pending the determination of this question the importation of the goods is to be suspended. If the justice finds that the goods are being imported with the intent alleged, his decision is to have the effect of a proclamation under the Customs Act, prohibiting the importation of the goods either absolutely or subject to conditions.

**Referendum** (No. 11).—By “referendum” in this Act is meant the submission to the electors of a proposed law for the alteration of the Constitution. Whenever a law for this purpose is proposed, the



Governor-General may issue a writ having attached to it a copy of the proposed law, setting out (1) the text of it and (2) the text of the provisions proposed to be altered. This writ is to be advertised by the Commonwealth Electoral Officer by advertisement in newspapers, and by exhibiting copies of the writ at post-offices and custom-houses. The polling is to be by ballot, and is to be taken on the day fixed by the writ. Each elector is to have one vote only.

Special provisions are made as to voting and the scrutiny of votes. The result is to be certified to the Governor-General by the chief electoral officer, stating the number of votes given for and against the proposal, and the number of ballot papers rejected as informal.

**Elections** (No. 12).—This is an Act to remove doubts as to the electoral divisions of the State of New South Wales by validating a proclamation fixing such divisions.

**Land Acquisition** (No. 13).—Under this Act the Commonwealth may acquire any land by agreement with the owner, or by compulsory process. In the latter case the Governor-General may direct that the land be acquired, and thereupon, by notification in the *Gazette*, declare that the land has been acquired for the public purpose therein expressed, and the notification having been laid before both Houses of Parliament, the land is to become vested in the Commonwealth, free from all trusts, charges, and easements. The value of the land for purposes of compensation is to be assessed without reference to any increase in value arising from the proposal to carry out the public purpose. In this connection it may be noted that "public purpose" is not to include land to be acquired for the seat of the Commonwealth Government. Damage by severance is to be taken into consideration, and also enhancement or depreciation of adjoining land of the owner.

If the Minister and the claimant cannot agree to the amount of it, the compensation is to be determined by an action for compensation by the claimant, or by a proceeding by the Minister in a Federal or State Court.

In case of mortgages on land compulsorily acquired, the mortgagee may join with the mortgagor in making a claim or making an independent claim. S. 52 defines the principles on which compensation to a mortgagee is to be assessed.

Limited owners, tenant for life, guardian, committee of lunatic, executor, etc., may sell and convey. In such case the purchase-money may be paid to a trustee.

**Customs**.—No. 14 alters the duties on a number of scheduled articles.

No. 7 confers a preference on certain goods the produce or manufacture of the British Colonies or Protectorates in South Africa which are included within the South African Customs Union.

**Excise.**—No. 15 amends the Excise Tariff Act, 1905, (*n*) in regard to cane sugar.

No. 16 alters the excise duties as to a number of articles—mostly agricultural implements.

No. 20 alters the excise duty on spirits.

**Patents** (No. 19).(*n*<sup>1</sup>)—This empowers the Commissioner of Patents, or the Law Officer, on appeal from the Commissioner, to extend the time for doing any act or taking any step, or to revive an application for a patent. Applications for patents lapsed by an error or omission of an officer of the Patent Office may also be revived.

**Spirits** (No. 21).—This Act in the interpretation clause defines very fully the meaning of such terms as “Pure Australian Standard Brandy,” “Australian Blended Brandy,” “Australian Standard Rum,” etc., and goes on to declare that in relation to trade and commerce with other countries and among the States, no person shall describe spirits by those names unless they conform to the definition. No person is to describe as brandy any spirit not distilled wholly from grape wine. The penalty is £50. No imported spirits (other than gin, Geneva, Hollands, schnapps or liqueurs) are to be delivered from the control of the Customs for human consumption, unless the collector is satisfied that the spirits have been matured by storage in wood for a period of not less than two years.

There are precise provisions as to the methylating of spirits.

Any officer of Customs may at any time enter a shop or warehouse and take samples.

**Pacific Island Labourers** (No. 22).—The Minister is empowered to grant a certificate to any Pacific Island labourer exempting him—by reason of age, infirmity, or marriage with a non-Pacific Island native—from the provisions of the Pacific Island Labourers Act, 1901. (*o*)

## 1907 (*p*)

## Public Acts—12.

The bulk of the legislation consists of Supply or Appropriation Acts.

**Parliamentary Allowances** (No. 5).—Each Senator and each member of the House of Representatives is for the future to receive an allowance of £600 *per annum*, except in the case of holders of certain paid offices, who are to receive £400. The money is paid out of the Consolidated Revenue Fund.

**Commonwealth Salaries** (No. 7).—States may tax the official salaries of officers of the Commonwealth, in common with other salaries earned within the State. The Act does not apply to the Governor-General.

(*n*) No. 24 of 1905.

(*o*) See *infra*, p. 413.

(*n*<sup>1</sup>) See *supra*, p. 425.

(*p*) Contributed by Herman Cohen, Esq.



**Judiciary (No. 8).**—This is a measure of the class with which all federations are familiar. The principal clause runs:

In matters (other than trials of indictable offences) involving any question, however arising, as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States, or as to the limits *inter se* of the constitutional powers of any two or more States, the jurisdiction of the High Court shall be exclusive of the jurisdiction of the Supreme Courts of the States; so that the Supreme Court of a State shall not have jurisdiction to entertain or determine any such matter, either as a Court of first instance or as a Court of Appeal from an inferior Court.

The other clauses appear to be consequential.

**Disputed Elections and Qualifications (No. 10).**—In some instances petitions to the Senate against the return of a Senator were not removed into the Court of Disputed Returns. This Act brings these cases into line with the general law. The Court must consist of at least three judges.

Either House may refer questions—"state a case" relating to qualifications of members as to vacancies to the Court.

**Bounties (No. 12).** A sum of £339,000 is appropriated during fifteen years for the payment of bounties. The provisions are of the usual order in such Acts, but s. 6 may be noted:

Every grower or producer who claims bounty under this Act shall specify the rates of wages paid in respect of the labour employed by him, other than the labour of members of his family, in growing or producing the goods; and the Minister, if he is of opinion that the rates so paid are below the standard rates paid in the place or district in which the goods are grown or produced, may withhold the whole or any part of the bounty payable.

## 1. NEW SOUTH WALES.

**1898 (a)** Acts passed (b)—Public, 47; Private, 2.

**Prefatory Observations.**—The Statutes passed in 1898 show that the work of consolidation and revision begun in 1897 is making rapid

(a) Contributed by A. R. Butterworth, Esq.

(b) In 1898 there were two sessions of Parliament. In the first the Acts Nos. 1 to 28 were passed, receiving the Royal Assent between July 1st and 27th; in the second session the Acts Nos. 29 to 47, and the two Private Acts, were passed, receiving the Assent between October 28th and December 29th.

progress. Of the forty-seven public Acts, twenty-seven are consolidating Acts, and one is a Statute Law Revision Act (No. 28), which repeals some six hundred obsolete Statutes.

Of the consolidating Acts, the more important deal with the law relating to Trustees (No. 4), Evidence (No. 11), Wills, Probate, and Administration (No. 13), Conveyancing and Real Property (No. 17), Licensing (No. 18), Bankruptcy (No. 25), Stamp Duties (No. 27), Lunacy (No. 45), and Seamen (No. 46). The most important Act introducing changes in the law is the Immigration Restriction Act (No. 3).

**Immigration Restriction.**—The Immigration Restriction Act (No. 3) (*c*) is a new departure in the legislation of New South Wales. The earlier Acts restricting immigration were limited to Chinese. The present Act is founded on the Immigration Restriction Act, 1897, of Natal (reproduced in Western Australia as No. 13 of 1897), though it is considerably less extensive than the Natal Act. The present Act prohibits, subject to certain exemptions (ss. 2, 6, 7), the immigration into the colony by land or sea of any “prohibited immigrant”—that is to say, any person who, when asked to do so by a specified officer, “shall fail to write out in his own handwriting in some European language, and sign, an application “claiming exemption in the form set out in a schedule (s. 3). A prohibited immigrant cannot hold a licence, acquire land, or vote (s. 9); and if any such immigrant makes his way into the colony in disregard of these provisions, he is liable to be fined, imprisoned for six months, and removed from the colony (ss. 4, 14); whilst a person appearing to be such an immigrant must before landing deposit £100, which may be forfeited if he do not within one week obtain a certain certificate that he does not come within the prohibition (s. 5). Heavy penalties are imposed on the masters and owners of vessels and others assisting persons to contravene the Acts (ss. 8, 10).

**Trustees.**—The Trustee Act, No. 4, which is one of the series of consolidating Acts, repeals the former Trustee Acts, and (save certain enactments) Trust Property Acts, and re-enacts their provisions. Part I. deals with the powers and duties of trustees, executors, and administrators; Part II. with the powers of the Court; Part III. with payment into Court of trust funds; and Part IV. contains miscellaneous provisions. The Act is, in effect, a re-enactment of the provisions of the Imperial Trustee Acts, 1850, (*d*) and 1852, (*e*) and of Lord St. Leonard’s Act, 1859, (*f*) and Lord Cranworth’s Act, 1860, (*g*) and only a few of

(*c*) See *supra*, p. 414.

(*d*) 13 & 14 Vict. c. 60.

(*e*) 15 & 16 Vict. c. 55.

(*f*) 22 & 23 Vict. c. 35.

(*g*) 23 & 24 Vict. c. 145.



its provisions are copied directly from the Imperial Trustee Act, 1893 (*h*)—*e.g.* ss. 29 and 32 from ss. 26 and 29 of the Imperial Act respectively. The provisions of the Imperial Act of 1893 as to increasing or diminishing the number of trustees (s. 10 [2]), the powers to sell subject to depreciatory conditions (s. 14), and to authorise receipt of money by a banker or solicitor (s. 17), have not, for example, been adopted. The investments authorised for trustees are far more limited than those authorised by s. 1 of the Imperial Act, being restricted to the following:—

- (1) Any public funds or Government stock or Government securities
- (2) Real securities in any part of New South Wales.
- (3) Any of the stocks, funds, or securities in or upon which by any general order cash under the control of the Court may from time to time be invested (s. 4 [1]).

**Audit.**—The Audit Act, No. 5, repeals the Audit Act of 1870 and two amending Acts, and re-enacts their provisions. As under the original Act of 1870, when once moneys have been paid in to a bank, keeping the public account, they can only be withdrawn by a formal instrument, signed by the Colonial Treasurer and countersigned by the Auditor-General (s. 16); and the latter must first ascertain that the money is then legally available and applicable to the purpose mentioned in the instrument, which must then be submitted to the Governor for his approval and signature (s. 17). The Auditor-General, besides the important duty of examining the public accounts, has every month either to allow and discharge the Colonial Treasurer for all receipts and payments properly given and made (s. 35 [ii.]), or to disallow and surcharge all sums not duly credited or authorised (s. 36); and also to examine and report fully to the Legislative Assembly upon the Treasurer's annual statement (s. 43). (*i*)

**Impounding.**—The Impounding Act (No. 6) repeals and re-enacts the provisions of the Impounding Act of 1865 and five amending Acts, regulating the establishment of pounds, the duties of pound-keepers, the impounding and detention of animals, their sale, and the remedies of their owners.

**Liens on Crops and Wool and Stock Mortgages.**—The Liens on Crops and Wool and Stock Mortgages Act (No. 7) repeals and consolidates the provisions of some earlier Acts. The Act provides that any person making a *bonâ fide* advance of money or goods to a holder of land on the security of the growing crops of agricultural or horticultural (*i.e.* fruit) produce under an agreement, duly registered within thirty days,

(*h*) 56 & 57 Vict. c. 53.

(*i*) In Victoria under the Audit Acts, 1890, No. 1066, and 1893, No. 1323, the Commissioners of Audit have to discharge similar duties.

shall have a preferable lien upon such crops, and be entitled to the produce (s. 4); and such lien shall not be affected by the lienor's death or bankruptcy, or by future sale or mortgage of the land (s. 5), but shall not continue in force for more than one year (s. 9). A preferable lien may in like manner be obtained on the next ensuing clip of wool (s. 11), and if the lienor neglect to shear and deliver the wool, the lienee may take possession of the sheep and shear them (s. 12). Mortgages of sheep, cattle, and horses must also be registered within thirty days (s. 13); and such mortgages and liens on wool are transferable by indorsement (s. 15). A penal clause is added for the punishment of frauds by lienors on wool and by mortgagers of stock, rendering them liable to fine and three years' imprisonment (s. 20).

**Coroners.**—The Coroners Act (No. 8) repeals and consolidates five earlier Acts. Adopting the provisions of the Act of 1861, (*k*) it empowers coroners to hold inquests into the cause and origin of fires, whenever the coroner or the Fire Brigades Board consider it a fit case for inquiry; and to commit for trial persons found guilty of arson (s. 12).

**Banks and Bank Holidays.** (*l*)—The Banks and Bank Holidays Act (No. 9) consolidates the law relating to the periodical publication of the liabilities and assets of banks, to the registration of the proprietors' names, and to bank holidays. Every bank has to make up each week a full statement of assets and liabilities (s. 4), and to prepare every quarter an abstract of these weekly statements, and a statement showing—

- (a) The amount of the capital stock of the bank preparing such abstract, paid up at the close of the quarter for which such abstract is prepared; and
- (b) The rate and amount of the last dividend that was declared by such bank to its shareholders or proprietors; and
- (c) The amount of the reserved profit of such bank at the time of declaring such dividend (s. 5).

This abstract and statement have to be verified by the oath of the manager, and delivered to the Colonial Secretary, to be laid before Parliament and published in the *Gazette* (s. 5). Ten days, including the day after Good Friday and the Prince of Wales' birthday, are named as bank holidays (s. 14, and 4th Schedule).

**Bills of Sale.**—The Bills of Sale Act, No. 10, (*m*) repeals and re-enacts the provisions of the Act of 1855, (*n*) which adopted those of the Imperial Act of 1854. (*o*) Registration must be effected within thirty days (s. 4), and renewed every twelve months (s. 5); and the goods

(*k*) 24 Vict. No. 10.

(*m*) See *infra*, p. 476.

(*l*) See *infra*, p. 455.

(*n*) 19 Vict. No. 2.

(*o*) 17 & 18 Vict. c. 36.



comprised in a bill of sale duly registered are exempt from the order and disposition clause of the bankruptcy law (s. 8).

**Evidence.**—Three Acts of this year (Nos. 11, 12, and 30) deal with the law of evidence.

The Evidence Act, No. 11, (*p*) which consolidates the Statute law relating to evidence, clears the Statute Book of five entire Acts and of portions of some twenty other Acts. It re-enacts the earlier Statute law respecting the competency and compellability of witnesses, and their examination and cross-examination, the means of proof and admissibility of certificates, public books and documents, Acts of State, judgments local and foreign, and other judicial proceedings, and entries in bankers' books, as well as many other matters. Proof of foreign law may be given in accordance with an enactment first introduced in 1891, (*q*) and founded on s. 426 of the Code of Procedure of the State of New York, which is now reproduced in the following terms:—

S. 19 (1). Evidence of any statute, code, or other written law of any part of the British dominions other than New South Wales, or of any foreign State, may be given by the production of a printed copy in a volume of such statute, code, or law, either—

- (a) Purporting to be published by the authority of the Government of such part of the said dominions, or of such State; or
- (b) Proved to the satisfaction of the Court to be commonly admitted as evidence in the Courts and judicial tribunals of such part of the said dominions, or of such State.

(2) Evidence of the unwritten or common law of any such part of the said dominions, or any such State, may be given by the production of a book of reports of cases adjudged in the courts thereof, purporting or proved to the satisfaction of the court to be authorised reports.

The Evidence (Penalties) Act (No. 12) is merely a temporary Act preserving certain repealed enactments for the purpose of construing certain unrepealed enactments pending further consolidation.

The Accused Persons' Evidence Act (No. 30) effects an alteration in the law respecting procedure in criminal trials by enacting that: "It shall not be lawful to comment at the trial of any person upon the fact that he has refrained from giving evidence on oath on his own behalf." (*r*)

(*p*) See *infra*, p. 457.

(*q*) 55 Vict. No. 5, s. 11.

(*r*) Similar enactments prohibiting such comment have been made in Victoria by the Crimes Act, 1891 (No. 1231), s. 34 (3); in Canada by the Evidence Act, 1893 (No. 31), s. 4 (2); and in New Zealand by the Criminal Code Act, 1893, (No. 56), s. 400. These enactments will be found collected in the Appendix to Butterworth's Criminal Evidence Act, 1898 (English), at pp. 105-6, 93 and 98, where the expediency of such a provision, and the contrast between these enactments and the enactment in the English Criminal Evidence Act, 1898, s. 1 (*b*), prohibiting such comment by the *prosecution*, is discussed (*ib.*, pp. 17 *et seq.*).

**Wills, Probate, and Administration.**—The Wills, Probate, and Administration Act (No. 13) <sup>(s)</sup> repeals various enactments relating to these matters, including the whole of the Imperial Wills Act of 1837, <sup>(t)</sup> and the New South Wales Probate Acts of 1890, and 1893, and consolidates their provisions. Part I. deals with wills, and re-enacts all the provisions of the Wills Act, except a few which are inapplicable to the circumstances of the Colony. Part II. deals with probate and administration, and re-enacts the law introduced in 1890 that upon the grant of probate or administration the real as well as personal estate of the deceased shall, as from his death, vest in the executor or administrator (s. 44).

**Pastures and Stock Protection.**—The Pastures and Stock Protection Act (No. 14) <sup>(t<sup>1</sup>)</sup> consolidates two earlier Acts of 1880 and 1881 passed for the purpose of protecting pastures and live stock from the depredations of noxious animals. The Act casts upon every owner of land—except in a district specially exempted (s. 5 [2])—the onerous duty “to make effective provision for, and to ensure the destruction of, all noxious animals at large in wild state upon such land,” and if he fail to perform such duty for twenty-eight days after notice is served on him, he becomes liable to a penalty not exceeding £50 (s. 10). The expression “noxious animals” includes marsupials and native dogs (s. 3).

**Commons.**—The Commons Regulation Act (No. 15) consolidates the law relating to this subject, and provides for the appointment by the Governor of first, and the election by the commoners of new, trustees of commons; for the keeping of a roll of the persons entitled to the use of the common; for meetings of the commoners and defining their rights.

**Public Hospitals.**—The Public Hospitals Act (No. 16) consolidates the provisions of three earlier Acts, and deals with the election and appointment of officers, and with hospital property and legal proceedings. The 2nd Schedule shows that the Act already applies to seventy-three hospitals throughout the Colony.

**Conveyancing and Real Property.**—The Conveyancing and Law of Property Act (No. 17) is an important Act of one hundred and twenty sections, consolidating the Statutes relating to conveyances, assignments, mortgages, settled estates, and titles to land. It is divided into eight parts (ss. 1 and 2 being preliminary), as follows: Part I., Titles to Crown grants (ss. 3–15). Part II., Claims to grants of land (ss. 16–25). Part III., The conveyance and assignment of property (ss. 26–36). Part IV., Leases and sales of settled estates and estates of

(s) See *infra*, pp. 456, 490.

(t) 7 Will. IV. & 1 Vict. c. 26, adopted in the Colony in 1839 by 3 Vict. No. 5.

(t<sup>1</sup>) See *infra*, p. 460.



infants (ss. 37-81). Part V., Renewable leaseholds of persons under disability and persons out of the jurisdiction (ss. 82-90). Part VI., Mortgages: (a) Implied powers of mortgagees (ss. 91-104); (b) Discharge and reconveyance (ss. 105-8); (c) Mortgaged lands of deceased persons (s. 109); (d) The title of mortgagors (s. 110). Part VII., Covenants to insure (ss. 111-16). Part VIII., Miscellaneous provisions (ss. 117-20). Part III. contains full provisions as to the acknowledgment of deeds, whether by married women or by others, in lieu of a fine or recovery (ss. 26-8), thus reproducing the enactment made in 1843, (*u*) whereby a deed duly executed and acknowledged in the manner prescribed was as valid and effectual to pass all the estate and interest of the parties as if a fine with proclamations had been levied or a common recovery suffered (s. 26). (*x*) Provisions first enacted in the Colony in 1891, (*y*) similar to those of the (Imperial) Voluntary Conveyances Act, 1893, (*z*) are also reproduced (s. 29). Part IV. empowers the Court to authorise leases or sales of the whole or parts of settled estates, but gives in general more restricted powers than those given by the (Imperial) Settled Estates Act of 1877, (*a*) of which it is an adaptation. It confers no such wide powers of lease or sale to the tenant for life as are given by the (Imperial) Settled Land Act, 1882. (*b*) A lease by a tenant for life without leave of the Court must be for a term not exceeding ten years (s. 68 [1]). The powers conferred on the Court by Part IV. may, however, be exercised, notwithstanding any express declaration to the contrary in the settlement, and any provision therein attempting to prevent a person applying to the Court to exercise such powers shall be *pro tanto* void (s. 77). (*c*) The first fourteen sections of Part VI., relating to the implied powers of mortgagees are taken from Lord Cranworth's Act, 1860. (*d*) A reconveyance for revesting the estate in land (not subject to the Real Property Act), in the mortgagor, is rendered unnecessary when an acknowledgment of satisfaction, duly signed and indorsed on the mortgage, is registered with the Registrar-General. Such acknowledgment discharges the mortgage and vests the estate in the person for the time being entitled to the equity of redemption, or,

(*u*) 7 Vict. No. 16, s. 16.

(*x*) As fines and recoveries could not be conveniently used in the Colony, a proclamation by the Governor of March 6, 1819, had made certain regulations for barring a married woman's right to dower, and this proclamation was confirmed by the Act of 1843, s. 16, above referred to.

(*y*) 55 Vict. No. 8.

(*z*) 56 & 57 Vict. c. 53.

(*a*) 40 & 41 Vict. c. 18.

(*b*) 45 & 46 Vict. c. 38.

(*c*) In this respect Part IV. differs from the (Imperial) Settled Estates Act, 1877, which provides that "no such powers shall be exercised if an express declaration that they shall not be exercised is contained in the settlement" (s. 38).

(*d*) 23 & 24 Vict. c. 145, ss. 11-24.

if there is a subsequent subsisting mortgage, vests the legal estate in the person in whom that subsequent mortgage is vested, or, if more than one such mortgage, then in the person who has the prior right to call for an assurance of such legal estate (s. 105). (f) Provision is also made to facilitate redemption in case the mortgagee is out of the jurisdiction, cannot be found, or is unknown (s. 108).

**Licensing.**—The Liquor Act (No. 18) (g) repeals three Licensing Acts, and consolidates the law relating to publicans and others engaged in the sale of “liquor,” which includes “any spirituous or fermented fluid whatever, capable of producing intoxication” (s. 3). The Act provides for licensing districts and courts; for brewers’, spirit merchants’, publicans’, and other licences; for inspectors, and for the cancellation of licences and disqualification of licensees. The Governor appoints a licensing court for every licensing district; the metropolitan court, consisting of seven members, being such of the metropolitan police or stipendiary magistrates or other persons as the Governor may appoint, and the senior police magistrate is chairman (s. 5). In other districts the Court consists of three members, being the appointed members and the police magistrate as chairman (*ibid.*). No portion of licensed premises, or of the building of which the same forms part, may be used as a retail store (s. 9 [4]). Wine, cider, or perry, in quantities of not less than two gallons, the produce of fruit grown within the Colony, and made by the seller, and not consumed on the premises, are exempt from the provisions of publicans’ and certain other licences (s. 13 [1]). The granting of a new publican’s licence, or of a certificate of removal of a publican’s licence within any municipality, shall be contingent upon the vote of the ratepayers, such vote to be taken once in three years; and if the number of votes in the negative equals or exceeds eleven-twentieths of the number of votes polled, the ratepayers’ option shall be held to have been exercised in the negative, but otherwise in the affirmative (s. 28). A negative vote, however, will not prevent the Court from granting such licence for a hotel of a specified size, nor an affirmative vote make it compulsory on the Court to grant a new licence (s. 29). Publicans are liable to a penalty of £10 for supplying any aboriginal native of Australia of any age, or any person apparently under the age of sixteen, with liquor for consumption on the

(f) A series of enactments have been made in order to effect this change in the law—viz. the Trustee Act, 1852, 16 Vict. No. 19, s. 52; a short Amendment Act of 1886, 50 Vict. No. 5, which it was found necessary to repeal by the Mortgages Release Act of 1893, 57 Vict. No. 4, which made the enactment in the form which is now consolidated in the present Act. An enactment in the Real Property Act of 1862, 26 Vict. No. 9, s. 61, provides for the discharge by indorsement duly registered of mortgages and incumbrances upon land brought under that Act.

(g) See *supra*, p. 439, and *infra*, p. 489.



premises (s. 48); and two justices may forbid all licensed persons, under a like penalty, to supply with liquor, for the space of one year, an "inebriate"—*i.e.* a person who "by the excessive drinking of liquor has so wasted his means, or is likely to impoverish himself to such a degree, as to expose himself or his family to want, or seriously impair his health" (s. 52).

**Weights and Measures.**—The Weights and Measures Act (No. 19) consolidates the law, declaring the weights and measures deposited in the Treasury (of which a list is contained in the 2nd Schedule) to be standard; providing for lost standards to be replaced, and models to be made and duly stamped; for inspection, for the sale of goods by weight or measure, and for the procedure against offenders.

**Aliens.**—The Naturalisation and Denisation Act of New South Wales (No. 21) is a consolidating Act, which declares the rights and disabilities of aliens, and empowers the Governor to grant a certificate of naturalisation to an alien who has resided for at least five years, and intends to reside, in the Colony, or in certain cases to grant letters of denisation to a foreign officer or person. Real and personal property may be freely acquired, held, and disposed of by an alien (s. 4). The provisions as to the rights and disabilities of aliens, the effect of a certificate of naturalisation, and the status of married women and children are similar to those of the Imperial Naturalisation Act, 1870. (*h*)

**Legal Practitioners.**—The Legal Practitioners Act (No. 22) repeals seven earlier Statutes, and consolidates their enactments. It is divided into six parts, as follows:—Part I., Preliminary (ss. 1–3); Part II., Barristers (ss. 4–12); Part III., Solicitors (ss. 13–15); Part IV., Conveyancers (ss. 16–20); Part V., Bills of Costs (ss. 21–39); Part VI., Unqualified Practitioners (s. 40); Part II. provides that the judges of the Supreme Court, the Attorney-General, and two barristers annually elected by the practising barristers shall form a board for the approval of properly qualified persons to be barristers (s. 4). The board shall promulgate rules for the examination of candidates for admission as barristers (s. 6), and may appoint examiners (s. 7). A solicitor of five years' standing from the date of his admission in the Colony is entitled to have his name removed from the roll of solicitors and be admitted without examination to the Bar (s. 11); and, conversely, barristers of similar standing may become solicitors (s. 14). The Act makes no provision for the examination of articled clerks, this subject and the admission of solicitors generally being regulated by rules made by the Supreme Court. The anomalous state of things introduced in 1892 is retained, whereby barristers are still limited by custom to discharge the functions of barristers, whereas every solicitor is competent to

(*h*) 33 & 34 Vict. c. 14.

appear, and has the right of audience in all courts in New South Wales in all matters and proceedings in which he acts as solicitor (s. 15). Part V. provides for the delivery of a signed bill before a solicitor can sue for fees, and for the taxation of bills. The Act adopts the term "solicitor" to express an "attorney-solicitor and proctor of the Supreme Court," in place of "attorney," a term which has long survived in the colony after its disuse in England.

**Newspapers.**—The Newspapers Act (No. 23) repeals five earlier Acts, and consolidates the law relating to the printing and publishing of newspapers and papers of a like nature, the main object of the Act being to prevent the mischiefs arising from the printing and publishing of newspapers by unknown persons.

**Auctioneers.**—The Auctioneers' Licensing Act (No. 24) repeals and consolidates earlier Acts, making provision for auctioneers' licences, and prohibiting public sales without such licence.

**Bankruptcy.**—The Bankruptcy Act (No. 25) (*i*) is an important Act of one hundred and fifty-six sections and five schedules consolidating the bankruptcy law. It follows the lines and adopts most of the provisions of the Imperial Act of 1883, (*k*) but is not absolutely identical with that Act. It preserves, for instance, certain variations of a highly technical nature, which have produced quite a wealth of colonial case-law. It does not, like the English Act, enact that a "fraudulent conveyance" shall be an act of bankruptcy, but a conveyance by a debtor "with intent to defeat or delay his creditors or any of them" (s. 4 [*b*]). So while by the English law a certain preference is to be "deemed fraudulent and void," preference in certain cases in New South Wales is declared void "whether fraudulent or not" (s. 56). The cases show the extreme refinements to which such variations lead.

**Medical Practitioners.**—The Medical Practitioners Act (No. 26) consolidates the Statute law relating to the qualifications of medical witnesses at coroners' inquests and at certain magisterial inquiries, and to the registration of legally qualified medical practitioners.

**Stamp Duties.**—The Stamp Duties Act (No. 27) consolidates the provisions of six repealed Acts, and deals with duties on deeds and instruments and on estates of deceased persons. The estate duties are as follows:—Part I., On the probate or letters of administration to be granted in respect of any estate real and personal of deceased persons—

Where the value of such estate is under £5000 ... 1 per cent.

Where the value is £5000 and under £12,500 ... 2 „

(*i*) A statement as to the bankruptcy law of the State was made by Mr. B. R. Wise, K.C., to the Departmental Committee which considered the subject in 1903. See Parliamentary Paper Cd. 4069.

(*k*) 46 & 47 Vict. c. 52.



Where the value is £12,500 and under £25,000 ... 3 per cent.

Where the value is £25,000 and under £50,000 ... 4 „

Where the value is £50,000 and over that amount ... 5 „

Part II., Settlement of property taking effect after death of settler: same duties as under Part I.

**Statute Law Revision.**—The Statute Law Revision Act (No. 28) removes some six hundred obsolete Statutes from the Statute Book.

**Income Tax.**—The Land and Income Tax (Declaratory) Act (No. 37) is an Act passed to amend the Land and Income Tax Assessment Act of 1895 (No. 15) and to over-ride (with the exception of a few decided or pending cases) certain judicial decisions adverse to the Commissioners of Taxation. The Supreme Court had decided that under the Act of 1895, which provided that a taxpayer was entitled to deduct from the taxable amount the expenses actually incurred “in the production of his income” (s. 28 [1]), he was entitled to deduct expenses incurred in the production of his total income, and not merely in the production of the taxable amount of his income, (*l*) and the Privy Council had affirmed this decision. (*m*) The Supreme Court had also decided that the profits derived by the proprietor, living in England, of certain meat-preserving works in New South Wales, where the meat was preserved, tinned, and shipped to England, in which country the tins were labelled, packed, and sold, were not income accruing from a trade carried on in New South Wales, nor income accruing from a source in New South Wales under the Act of 1895, s. 15, (1), (4), but were exempt as “income earned outside the Colony” (s. 27, [3]). (*n*) The Supreme Court had also held that a mining company, registered in Victoria, holding lands under lease from the Crown in New South Wales, where it carried on mining operations and treated the ore, the products of which were then exported to Victoria, and sold there or in London, and the profits received in Victoria or in London, was not liable to pay income tax in New South Wales, as the income was “earned outside the Colony.” (*o*) The present Act of 1898 has been passed with the object of altering this law, and rendering the income in such cases liable to taxation retrospectively (except as to cases then pending) as well as in the future.

**Crown Lands.**—The Crown Lands Act (No. 38) is a short Act dealing with the valuation and appraisalment of improvements of Crown lands.

**Distress for Rent.**—The Distress for Rent Restriction Act (No. 43) (*p*)

(*l*) *Re Teece* (1897), 18 N. S. W. L. R. 372.

(*m*) *Commissioners of Taxation v. Teece*, [1899] A. C. 254.

(*n*) *Re Tindal* (1897), 18 N. S. W. L. R. 378.

(*o*) *Commissioners of Taxation v. Broken Hill Proprietary Block 10 Co.* (1898), 19 N. S. W. L. R. 301.

(*p*) Repealed by No. 18 of 1899. See *infra*, p. 453.

protects a sewing machine, typewriting machine, or mangle, the property of, or under hire to, any woman, from distress for rent in respect of the premises where the machine or mangle is; but one woman is not entitled to have more than one sewing machine, one typewriting machine, or one mangle protected under the Act.

**Dogs and Goats.**—The Dog and Goats Act (No. 44) consolidates the law on this subject, and provides for the registration of dogs, and contains many regulations respecting them. If a dog upon a highway rushes at or attacks a person, horse, or bullock, whereby the life or limbs of any person are endangered or property injured, the owner is liable to a penalty of from twenty shillings to five pounds beyond the damage (s. 13), and the owner is liable for any injury done by his dog without any proof of a previous mischievous propensity (s. 19), while any dog when not on his owner's premises attacking a person or animal may be destroyed (s. 20). Neither dogs nor goats may be used for the purposes of draught (s. 23).

**Lunacy.**—The Lunacy Act, No. 45, is an important Act of one hundred and eighty sections and nineteen schedules, repealing four earlier Acts and consolidating the law respecting the insane. It is divided into ten parts, as follows: Part I., Proceedings by which persons of unsound mind may be (1) placed under restraint; (2) removed to and from an adjacent colony and be treated therein (ss. 4–24). Part II., Hospitals for the insane (ss. 25–30). Part III., Licensed houses (ss. 31–51): (1) for the insane; (2) for the reception of a single patient. Part IV., Reception-houses for the temporary treatment of the insane (ss. 52–58). Part V., Hospitals for the criminal insane (ss. 59–76). Part VI., Inspection, transfer, and discharge of patients (ss. 77–100). Part VII., Proceedings for declaring persons insane or incapable, and for the appointment of committees, etc. (ss. 101–14). Part VIII., Administration and management of the estates of insane persons and patients, including the powers and duties of the Master in Lunacy (ss. 115–67). Part IX., Court visitor (s. 168). Part X., Miscellaneous provisions (ss. 169–80).

**Seamen.**—Two Acts relate to seamen: the Seamen's Act (No. 46) and the Foreign Seamen's Act (No. 47).

The Seamen's Act (No. 46) repeals five Acts and portions of four other Acts, and consolidates their provisions. It is divided into eleven parts dealing with the following matters:—Part I., Preliminary (ss. 1–5). Part II., Shipping offices and masters (ss. 6–12). Part III., Apprenticeship (ss. 13–16). Part IV., Engagement of seamen: (1) Generally (ss. 17–30); (2) Islanders (ss. 31–34). Part V., Discharges (ss. 35–9). Part VI., Wages: (1) Accrual and payment (ss. 40–8); (2) Forfeiture (ss. 49–52); (3) Allotment notes (ss. 53, 54); (4) Remedies (ss. 55–7).



Part VII., Property of deceased seamen (ss. 58–68). Part VIII., Protection (ss. 69–80). Part IX., Discipline (ss. 81–91). Part X., Vessels in port: (1) Duties of masters (ss. 92–100); (2) Offences by seamen and other persons (ss. 101–4); (3) Powers of justices and constables (s. 105); (4) Procedure (ss. 106–11. Part XI., Miscellaneous matters (ss. 112–19).

The Foreign Seamen's Act (No. 47) consolidates the law on this subject, repeals and re-enacts an Act passed in 1852(*q*) for more effectually preventing desertion and other misconduct of seamen belonging to foreign ships; and provides for proceedings being taken in a summary way before justices.

### 1899 (*r*)      Acts passed—Public, 54 (*s*); Private, 7.

**Introductory Observations.**—Of the fifty-four public Acts of 1899, eighteen are consolidating Statutes which remove a large number of earlier enactments from the Statute Book.

The longest of these consolidating Statutes is the Companies Act, (No. 40), which with its schedules covers over one hundred pages of print.

Another of the longest Acts of the year, also a consolidating Act, is the Common Law Procedure Act (No. 21) which with its schedules covers seventy-two pages. It is somewhat remarkable in that it re-enacts in New South Wales in 1899 the provisions relating to practice and the mode of pleading which prevailed in the Courts at Westminster at the end of 1854, while the neighbouring Colonies have for some years adopted the practice under the Judicature Acts. There is, no doubt, a strong opinion prevalent, which cannot be fairly said to be altogether groundless, that the long rambling statements permitted under the Judicature Acts are no improvement on the clear and concise pleadings under the Common Law Procedure Acts, while the increase in interlocutory proceedings has considerably added to the cost of litigation. But certain amendments in Common Law procedure have long been, and still are, urgently needed in New South Wales. There is, for instance, no summary means of obtaining judgment as under Order 14; a defendant can still enter an appearance in all cases without leave, and (except in action on bills of exchange and promissory notes) file a sham plea of "never indebted" for the

(*q*) 16 Vict. No. 25.

(*r*) Contributed by A. R. Butterworth, Esq.

(*s*) In 1899 there were three sessions of Parliament. Act No. 1 alone was passed in the first session; Acts No. 2 and 3 in the second session; and the remainder in the third session. They are all published in one volume.

sole purpose of gaining time. Again, payment into court, together with a defence denying liability, is not allowed; there is no third party procedure, and counterclaims are unknown, while interpleader is still governed by the English Act of 1831 (*t*) unamended. (*u*)

Another Act which calls for special notice is the Factors Act (No. 28). It is called a consolidating Act, but it seems impossible to justify the title, since one of its sections merely declares that the Imperial Factors Acts of 1823 (*x*) and 1825 (*y*) are in force in the Colony. So far from this "consolidating Act," therefore, containing the law of the Colony, it is necessary, in order to ascertain this law, to turn to two singularly ill-drawn Imperial Acts, repealed in England in 1889 (*z*) by the Factors Act, which consolidated their provisions. It is difficult to see what good purpose is served by this kind of legislation.

**Advances to Settlers (No. 1).**—This Act, which received the Governor's assent on April 4, 1899, after reciting that "many settlers are in necessitous circumstances and are financially embarrassed owing to the present and recent droughts, and it is expedient to make temporary advances to relieve such settlers," authorises the raising of a loan at  $3\frac{1}{2}$  per cent. by the Colonial Treasurer for the purpose of making temporary advances to such settlers, and provides for the making and repayment of such advances, and for purposes incidental to or consequent on those objects. A board of not more than three members is to be appointed to carry out the provisions of the Act (s. 13). No advance is to exceed £200, and interest is to be paid at 4 per cent., and the principal and all interest is to be repaid within ten years, and all advances are to be made subject to such conditions as the board may prescribe, and to certain conditions specified in the Act (s. 9 [2]). If any part of the principal or interest is unpaid for three months after the due date of payment, the Secretary for Lands may sell or otherwise dispose of the land, subject, however, to prior encumbrances (*ibid.*).

**Australian Federation Enabling (No. 2).**—This Act, which received the Royal assent on April 22, 1899, provides for submitting to the electors of New South Wales the acceptance or rejection of the Draft Bill to constitute the Commonwealth of Australia. (*a*) The first schedule

(*t*) 1 & 2 Wm. IV. c. 58.

(*u*) In 1887 Sir Julian (then Mr.) Salomons introduced in the Legislative Council a Bill the object of which was to adopt many of the main amendments in the law of procedure effected by and under the Judicature Acts without abolishing the old style of pleading, but the Bill was not passed.

(*x*) 4 Geo. IV. c. 83.

(*y*) 6 Geo. IV. c. 94.

(*z*) 52 & 53 Vict. c. 45.

(*a*) Similar Enabling Acts were passed in 1899:—in South Australia on March 8th (61 & 62 Vict. No. 717, see *infra*, vol. ii. p. 1), in Queensland on June 21st (63 Vict. No. 1, see *infra*, p. 500), in Victoria on July 7th (63 Vict. No. 1603, see *infra*, vol. ii. p. 86), and in Tasmania on July 11th (63 Vict. No. 1, see *infra*, vol. ii. p. 59).



to the Act gives the form of ballot paper to be used, enabling each elector to answer "Yes" or "No" to the question, "Are you in favour of the proposed Federal Constitution Bill, as amended?" The Bill as drafted by the Federal Convention of 1897-98 had been amended at a conference of Prime Ministers at Melbourne in January and February, 1899, and the amendments so made are set out in the second schedule, while the third schedule to the Act contains the Draft Bill as so amended. (b)

**Conciliation and Arbitration (No. 3).**—This Act, which has for its object to make provision for the prevention and settlement of trade disputes, confers on the Minister charged with the administration of the Act powers of directing inquiries, appointing conciliators and arbitrators, and otherwise promoting a settlement of differences, similar to the powers conferred on the Board of Trade by the Imperial Conciliation Act, 1896. (c)

**Prevention of Cruelty to Animals (No. 11).**—This Act (d) amends the principal Act of 1850. (e) The word "animal" in this and the principal Act is made to include "any species of quadruped, and every species of bird, whether in a natural or domestic state" (s. 1). The carrying of an animal, whether upon a vehicle or not, so as to cause unnecessary

Polls were taken under these Acts, and large majorities voted in favour of the Federal Constitution proposed. Western Australia stood aloof for some time, but in June, 1900, while the Constitution was being discussed in the British Parliament, that Colony passed a Federation Enabling Act, which enacted that this Constitution should be submitted to the electors and a poll be taken on July 31, 1900. This poll resulted in a large majority in favour of the Constitution, and on August 21st motions were unanimously passed in both Houses of the Western Australian Parliament that a petition be presented praying her Majesty to declare by proclamation that Western Australia be admitted an Original State of the Commonwealth (cf. the Imperial Commonwealth of Australia Constitution Act, s. 3). The result of the polls (according to the *Western Mail*, a weekly newspaper published at Perth, Western Australia, of August 4 and 25, 1900) was as follows:—

|                          | For the Bill. | Against. | Majority. |
|--------------------------|---------------|----------|-----------|
| South Australia ... ..   | 65,990        | 17,053   | 48,937    |
| New South Wales ... ..   | 107,274       | 82,701   | 24,573    |
| Queensland ... ..        | 38,488        | 30,996   | 7,492     |
| Victoria ... ..          | 151,352       | 9,656    | 141,696   |
| Tasmania ... ..          | 12,931        | 779      | 12,152    |
| Western Australia ... .. | 44,704        | 19,691   | 25,013    |
| Totals ... ..            | 420,739       | 160,876  | 259,863   |

(b) The Bill, with a few amendments, became the Commonwealth of Australia Constitution Act (63 & 64 Vict. c. 12).

(c) 59 & 60 Vict. c. 30.

(d) The provisions of this Act may be usefully compared with those of the Imperial Statute (the Wild Animals in Captivity Protection Act, 1900, 63 & 64 Vict. c. 33).

(e) 14 Vict. No. 40.

suffering is made an offence, as is also knowingly and cruelly ill-treating any animal by overloading or overcrowding.

**Military Contingent** (No. 12).—This Act makes provision for the government and discipline of the contingent consisting of officers and men of the military forces from time to time raised and despatched by the Government of New South Wales for service with her Majesty's Regular Forces in South Africa. It enacts that the Contingent shall be subject to the Military and Naval Forces Regulation Act—a Colonial Statute of 1871—and in so far as the said Act and regulations thereunder do not provide for the effective government and discipline of the Contingent, to the Imperial Army Act, (*f*) the Queen's Rules and Regulations, and the Articles of War, etc.

**Small Debts Recovery** (No. 13). (*f*<sup>1</sup>)—This Act consists of sixty-eight sections and schedules, and repeals the whole or parts of seven prior Acts relating to the recovery of small debts in Courts of Petty Sessions, and consolidating their provisions.

**Matrimonial Causes** (No. 14).—This is an Act of ninety-five sections, repealing the whole or parts of eight earlier Acts, and consolidating their provisions. It re-enacts the provisions introduced by the Act of 1881 making adultery by a husband domiciled in the Colony a sufficient ground for dissolution of marriage (ss. 15, 19), as well as the provisions contained in the Acts of 1892 whereby, on the petition of either husband or wife who has been domiciled in the Colony for three years and upwards, wilful desertion without just cause for three years and upwards, or habitual drunkenness and neglect for such period, or being sentenced for a long term of penal servitude or imprisonment, or having repeatedly assaulted and cruelly beaten the petitioner, is made a valid ground for dissolution of marriage (ss. 13, 16, 20).

**Marriage** (No. 15).—This Act repeals three prior Acts, and consolidates the law relating to marriage.

**Printing** (No. 16).—This Act repeals two earlier Acts of 1827 and 1852 and consolidates their provisions for preventing the printing and publishing of books and papers by persons not known. Every possessor of a printing press or types for printing is still compelled to give signed notice thereof to an officer of the Supreme Court, and if he fails to do so or uses such press or types in any place other than that expressed in his notice, he becomes liable to a penalty of £20 (s. 2).

**Landlord and Tenant** (No. 18). (*f*<sup>1</sup>)—This is a consolidating Statute relating to the law of landlord and tenant which repeals the Leases Facilitation Act of 1847, the Distress for Rent Acts of 1851 and 1898, (*g*) the Tenements Recovery Act, of 1853, and certain other enactments.

(*f*) 44 & 45 Vict. c. 58.

(*f*<sup>1</sup>) See *infra*, p. 488.

(*g*) See *supra*, p. 448.



**Patents (No. 19).**—This Act repeals and consolidates the provisions of four earlier Acts relating to letters patent.

**Police Regulation (No. 20).**—This Act consolidates the Statute Law relating to the regulation of the police force.

**Common Law Procedure (No. 21).**—This is a long Act of 270 sections with schedules, consolidating the enactments—most of which were passed between the years 1840 and 1861—relating to the process, practice, and mode of pleading at law in the Supreme Court. These enactments include the provisions of the New South Wales Common Law Procedure Acts of 1853 and 1857, which adopted the main provisions of the English Common Law Procedure Acts of 1852 (*h*) and 1854 (*i*) respectively. The practice and mode of pleading, thus consolidated and re-enacted, correspond to the practice and pleading prevailing in the Courts at Westminster at the end of 1854. (*k*)

**Adulteration of Liquors (No. 22).**—This Act consolidates two prior Acts relating to the adulteration of malt liquors and of spirituous or fermented liquors.

**Book Purchasers' Protection (No. 25).**—This Act, which consolidates the law on this subject, repeals and re-enacts an Act of 1890 which had for its object to protect the purchasers of certain books and other publications, and to amend the law of contracts relating thereto. The Act applies to every contract for the sale of any book, engraving, lithograph, picture, or other like matter, where the article is not to be delivered to the purchaser complete at the date of the contract (ss. 3, 4); and every such contract is void unless signed by the purchaser on a prescribed form clearly stating his total liability (s. 5), a duplicate of which form is to be given to him (s. 6).

**Felons' Apprehension (No. 26), and Prisons (No. 27).**—These are consolidating Statutes relating to those matters respectively.

**Factors (No. 28).**—This Act is intituled "An Act to Consolidate the Enactments relating to Advances made to Agents intrusted with Goods," but its clauses fail to justify this title. What it, in fact, does, is to consolidate the provisions of the earlier Act, (*l*) which was a transcript of the Imperial Factors Act of 1842, (*m*) and to declare that the Imperial Factors Acts of 1823 (*n*) and 1825 (*o*) are in force in the Colony (s. 3). The amendments in the law introduced by the Imperial Factors Act of 1877 (*p*) have not been adopted, nor has any use been made of the Imperial Factors Act, 1889, (*q*) which consolidated and repealed the earlier Acts. (*r*)

(*h*) 15 & 16 Vict. c. 76.

(*i*) 17 & 18 Vict. c. 125.

(*k*) As to this Act, see, further, the Introductory Observations, *supra*, pp. 450–451.

(*l*) 30 Vict. No. 13.

(*m*) 5 & 6 Vict. c. 39.

(*n*) 4 Geo. IV. c. 83,

(*o*) 6 Geo. IV. c. 94.

(*p*) 40 & 41 Vict. c. 39.

(*q*) 52 & 53 Vict. c. 45.

(*r*) See also the Introductory Observations, *supra*, p. 451.

**Bank Holidays** (No. 30). (*s*)—This Act amends the principal Act of 1898 (*t*) in the following respect—viz. when January 26th, the Queen's Birthday, August 1st, or the Prince of Wales's Birthday falls on any day of the week other than Monday, the following Monday shall be a Bank Holiday in lieu of the day itself.

**Friendly Societies** (No. 31).—This Act amends the law relating to these societies, and partially repeals the Act of 1873. (*u*)

**Navigation** (No. 32). (*x*)—This Act was reserved on December 8, 1899, for her Majesty's assent, which was notified on March 17, 1900. (*y*) It abolishes the Marine Board which was incorporated under the Act of 1871, and constitutes a Department of Navigation and Courts of Marine Inquiry, and amends the Navigation Acts of 1871 to 1896 in other respects.

**Early Closing** (No. 38). (*z*)—Shops in the metropolitan and Newcastle districts are to be closed daily at 6 p.m., except that if open on Wednesday till 6, they may be open on Friday till 10 p.m. and on Saturday not later than 1 p.m.; or if closed on Wednesday at 1 p.m., they may be open on Saturday till 10 p.m. (*s*. 1). Country shops are to be closed on four days in the week at 6 p.m., on one day at 1 p.m., and on another day at 10 p.m. (*s*. 3). Exceptions are made in the case of shops of a certain kind: hairdressers' shops can be open till 7.30 p.m. (*s*. 5); public-houses, tobacconists', fruit shops, etc., are to close at 11 p.m. and restaurants at midnight (*s*. 6). Every person employed by a butcher or milk-vendor in delivering meat or milk is to have a half-holiday on one week-day in each week, and every baker's man delivering bread is to have a holiday on one week-day in each month (*s*. 10). Any person infringing the Act is liable to a penalty of £2 for a first offence, and from £2 to £10 for a subsequent offence (*s*. 15).

**Infants' Custody and Settlements** (No. 39).—This Act consolidates the law relating to: Part I., the custody of Infants; Part II., infants' marriage settlements; and Part III., the settlement of damages recovered on behalf of children.

**Companies** (No. 40). (*a*)—This is a long Act of 284 sections and eight schedules, consolidating the provisions of nine earlier Statutes which it repeals. Besides re-enacting provisions identical for the most part with those of the Imperial Companies Acts, it re-enacts the main provisions of the New South Wales Reconstructed Companies Act, 1894, and also those of the No-liability Mining Companies Act, 1896.

(*s*) See *infra*, p. 490.

(*t*) See *supra*, p. 441.

(*u*) See *infra*, p. 469.

(*x*) Repealed by No. 60 of 1901.

(*y*) N.S.W. *Government Gazette*, No. 265, March 27, 1900.

(*z*) Cf. the Early Closing Act of West Australia, 1898, No. 36, see *infra*, vol. ii. p. 175. For amending Act, No. 81 of 1900, see *infra*, pp. 463-464.

(*a*) See *infra*, pp. 456, 461.



**Gold and Mineral Dredging** (No. 44). (*b*)—This is an Act to regulate mining for gold and other minerals by dredging, pumping, sluicing, or other method in the beds of rivers and lakes, or under tidal or standing waters, or under the ocean contiguous to the coast-line. The Governor is empowered to grant leases of Crown land for such purposes in areas not exceeding ten acres for every man to be employed, and one acre in addition for every £50 to be expended; but the labour shall not be less than in the proportion of seven men to one hundred acres, and the maximum area demised shall not exceed one hundred acres (s. 3). Two or more leases, however, may be amalgamated for more efficient working by leave of the Minister. Such leases shall not be for a longer term than fifteen years, renewable on payment of a fine (*ibid.*).

**Probate Duties Amendment** (No. 45).—This Act imposes certain probate and other duties and increases the amount of death duties payable under the Stamp Duties Act, 1898. (*c*) Thus the duty is raised where the value of the estate is between £1000 and £5000 from 1 to 2 per cent., and where it exceeds £100,000 the duty is raised from 5 to 10 per cent. The share of the widow or the children of the deceased is to be calculated, however, at only one-half of this percentage.

**Companies (Death Duties)** (No. 53). (*d*)—This Act provides for the registration of the offices of companies incorporated according to the laws of some country other than New South Wales which carry on there the business (1) of mining for minerals, or (2) of pastoral or agricultural production, or of timber-getting; and imposes duties payable by the companies on the death of shareholders, wherever domiciled, of such companies. The duties payable are at the same rate as those payable under the Probate Duties Act (No. 45), (*e*) and if paid under that Act are not payable under this Act in respect of the same shares or stock (s. 7).

**Library and Art Gallery** (No. 54).—This Act places the control and management of the Public Library (Part I.) and of the National Art Gallery (Part II.) each in the hands of a separate body of trustees incorporated by the Act, and each body of trustees is endowed with an annual sum of £2000 out of the Consolidated Revenue, exclusive of rent and salaries. Donations or bequests to these institutions are exempted from the death duties (s. 32).

(*b*) See *infra*, p. 469.

(*c*) As to this Act and the amount of death duties payable under it, see *supra*, pp. 447-448.

(*d*) See *infra*, p. 463.

(*e*) See *supra*, p. 443.

1900 (*f*)      Acts passed—Public, 85 ; Private, 11.

**Introductory Observations.**—Of the eighty-five public Acts passed in the session of 1900, fourteen are consolidating Acts, of which the principal are the Real Property Act, No. 25, the Public Works Act No. 26, and the Crimes Act, No. 40.

While the work of consolidating the Statutes is thus progressing, the mode in which it is effected is not always entirely satisfactory. Whether it is desirable, for instance, to include certain enactments in a Crimes Act or in an Evidence Act may be open to argument; but it is difficult to discover what good purpose can be served by placing them in a consolidating Statute of the latter class and then, after a year or two, in a consolidating Statute of the former class. (*g*) The result of adopting such a course is that in the case of the consolidating Evidence Act, 1898 (No. 11) (*h*), a new Act to bring the enactments up to date is already required, more than one-fifth of its fifty-five sections having already been repealed. Still more serious fault is to be found with a section of the Crimes Act, 1900 (No. 40, s. 407), the first clause of which deals with the competency of parties to *civil* proceedings.

**Indecent Publications** (Nos. 2 and 27).—The first of these Acts makes it a summary offence to publish a newspaper containing an indecent advertisement or report, or to deliver such advertisement for publication in a newspaper, or to exhibit to public view, or post or print, indecent pictures or writings. A verbal error in this Act is amended by Act No. 27.

**Art Unions** (No. 4).—This Act extends the immunity for taking part in certain lotteries afforded by the principal Act of 1850.

**Interest on Judgments** (No. 5).—This Act reduces the rate of interest from a rate not exceeding 8 per cent., or in the case of bills and notes 12 per cent., allowed by the Common Law Procedure Act, 1899, (*i*) to a fixed rate of 4 per cent.

**Attachment of Wages Limitation** (No. 6).—By this Act no order in respect of future debts shall be made for the attachment of wages or salary not exceeding £2 a week, or where greater, for the attachment of more than the excess.

(*f*) Contributed by A. R. Butterworth, Esq.

(*g*) The provisions, for example, respecting witnesses to character contained in s. 348 of the Criminal Law Amendment Act of 1883 were repealed and re-enacted by the consolidating Evidence Act, 1898 (*supra*, p. 442, No. 11, ss. 2, 41, and schedule), and these provisions are in turn repealed and re-enacted by the Crimes Act, 1900 (No. 40, ss. 2, 412, 413, and schedule).

(*h*) See *supra*, p. 442.

(*i*) See *supra*, p. 454.



**Sheriff** (No. 16).—This Act repeals and consolidates enactments relating to the office of sheriff.

**Public Watering Places** (No. 17).—This Act consolidates the Acts regulating public watering-places and protecting certain reserves from trespass by stock.

**Trade Marks** (No. 19).—By this Act the Trades Marks Act, 1865, and the amending Act of 1893 are repealed, and their provisions consolidated.

**Oaths** (No. 20).—This Act consolidates the enactments relating to oaths, affirmations, statutory declarations, and affidavits.

**Mining Partnerships** (No. 21).—By this Act the Statutes limiting the liability of mining partnerships are consolidated and three earlier Acts repealed.

**University** (No. 22).—This Act consolidates the Acts relating to the University of Sydney and colleges within the University, and repeals eight earlier Statutes.

**Noxious Microbes** (No. 23).—This Act consolidates the enactments relating to the communication of infectious diseases to animals.

**Partition** (No. 24).—This Act consolidates enactments relating to partition.

**Real Property** (No. 25). (*k*)—This important Act of one hundred and forty-three sections with twenty schedules repeals five earlier Statutes, and consolidates the enactments relating to the declaration of titles to land and the facilitation of its transfer. The Act and the Conveyancing and Law of Property Act, 1898 (No. 17), (*l*) now contain the main statutory provisions respecting titles to and the transfer of land other than Crown lands.

The Act is divided into seventeen parts (ss. 1–3 being preliminary) which deal with the following subjects: Part I., officers (ss. 4–11); Part II., general powers of Registrar-General (s. 12); Part III., lands subject to the Act (s. 13); Part IV., applications to bring land under the Act and proceedings thereon (ss. 14–28); Part V., issue of certificates of title and grants (ss. 29–31); Part VI., register book and registration (ss. 32–45); Part VII., dealings. (This part includes (1) transfers (ss. 46–52); (2) leases (ss. 53–55); (3) mortgages and encumbrances (ss. 56–67); (4) dealings outside New South Wales (ss. 68–71); (5) caveats against dealings (ss. 72–74); in the main, Part VII. and the schedules re-enact the corresponding clauses and schedules of the Real Property Act of 1862, hereby repealed, which introduced the well-known Torrens system of land registration and transfer.) Part VIII., implied covenants and short forms of covenants

(*k*) See *infra*, p. 468.

(*l*) For a summary of this Act of 1898, see *supra*, pp. 443–445.

(ss. 75-81); Part IX., trusts (ss. 82-87); Part X., powers of attorney (ss. 88-89); Part XI., transmissions (ss. 90-96); Part XII., general provisions (ss. 97-117); Part XIII., fees (118-120); Part XIV., civil rights and remedies (ss. 121-135); Part XV., cancellation and correction of instruments (ss. 136-138); Part XVI., practice and procedure (ss. 139-140); Part XVII., criminal provisions (ss. 141-143).

**Public Works** (No. 26).—This Act repeals the Public Works Act, 1888, and five other Statutes, and consolidates their provisions.

**Land Tax** (Nos. 28 and 46).—These Acts make certain amendments in the Land and Income Tax Assessment Act of 1895.

**Inebriates** (No. 32).—This is an Act to provide for the care, control, and treatment of inebriates, and for incidental purposes. It empowers a judge or police magistrate on the application of (1) an inebriate or any person authorised in writing in that behalf by an inebriate while sober; (2) the husband or wife, or a parent, or a brother, sister, son, or daughter of full age, or a partner in business of an inebriate; or (3) a sub-inspector of police acting on the request of a duly qualified medical practitioner in professional attendance on the inebriate, or on the request of a relative of the inebriate, or at the instance of a justice of the peace; and on satisfactory proof that the person is an inebriate to order that such person be placed under control for a period not exceeding twenty-eight days, or in an institution licensed under the Act or under the charge of an attendant for a period not exceeding twelve months; but no such order shall be made except on production of a medical certificate that the person is an inebriate, corroborated by other evidence, and on personal inspection (s. 1). A Court of petty sessions may order an inebriate thrice convicted of drunkenness within the preceding twelve months to be placed in such institution for a period of not less than six or more than twelve months, and a judge may from time to time extend the time for further periods not exceeding twelve months each (s. 3). The expenses may be ordered to be paid out of the inebriate's property (s. 4), and the Supreme Court may make orders as to the property of an inebriate incapable of managing his affairs (s. 5). Provisions are made for escape, and for the inspection of houses and institutions, and for the making of regulations.

**Medical Practitioners** (No. 33 and 70).—By these two Acts much has been done to restrict unqualified persons from practising medicine in the colony. The former is intituled "An Act for the Registration of Medical Practitioners, the Restriction of Unqualified Persons from Practising, and to amend such other Statutes as may be inconsistent therewith," and it renders liable to a penalty of £50 any person who, not being a legally qualified medical practitioner, uses the title of a physician, doctor of medicine, or surgeon, or any name or description



implying that he is a legally qualified medical practitioner, with further penalties for a continuing offence (s. 1). The medical board is authorized in certain events to remove names from the register of medical practitioners (s. 2). By the later Act (No. 70) the medical board may remove from the register the name of any person who "has been guilty of infamous conduct in any professional respect," the board sitting as an open court to hear the charge, and an appeal lying to the Supreme Court (s. 1). A person advertising that he treats disease or ailments must advertise his full names (s. 2).

**Witnesses** (No. 34).—This Act consolidates enactments relating to the examination of witnesses and production of documents.

**Supreme and Circuit Courts** (No. 35).—This is a useful Act consolidating certain enactments relating to these Courts and repealing twelve earlier Acts and parts of many others.

**Pastures and Stock Protection (Rabbit)** (No. 37). (*m*)—By this Act rabbits are included among "noxious animals" in the Pastures and Stock Protection Act, 1898 (No. 14). (*n*)

**Validation of Orders of Sale in Administration** (No. 38). (*o*)—This Act, called the Administration (Validating) Act, was rendered necessary by the decision of the Supreme Court in *Kelly v. Toohey*, given on March 24, 1900. (*p*) The Probate Act, 1890 (No. 25), had declared that no real estate should be sold or mortgaged by an administrator without the consent of all the beneficiaries or the order of the Court in that behalf (s. 35). It had been the practice of the Probate Court for many years to grant letters of administration expressed to give full power to sell or lease the real estate, and such a grant was commonly treated as equivalent to an order for sale. When the point, however, was raised in the case of *Kelly v. Toohey*, the majority of the Court held that such a grant was not an order for sale, and that when made, the administrator had no power to sell against the wish of the beneficiaries. As, however, a great number of sales had taken place under similar grants of administration, the present Act was passed to validate similar grants giving power or leave to sell, and acts done in pursuance thereof, and also certain transactions of sale, etc., by administrators or executors between 1862 and 1900. The Act is not strictly limited to validating such transactions, but confers new powers on the Court to authorise such transactions in the future (s. 4), and where the estate does not exceed £1000, to authorise the business or trade of the deceased to be carried on pending realisation (s. 5).

**Crimes** (No. 40)(*q*).—This is a long Act of five hundred and seventy-seven sections and seven schedules, repealing a large number of

(*m*) See *infra*, p. 471.

(*n*) As to this Act, see *supra*, p. 443.

(*o*) See *infra*, p. 490.

(*p*) (1899) 21 N. S. W. L. R. (Eq.), 33.

(*q*) See *infra*, p. 487.

earlier enactments and re-enacting their provisions. It is in the main a re-enactment of the Criminal Law Amendment Act of 1883 (No. 17) and amending Acts, and it preserves the simple distinction first made by the Act of 1883, whereby offences punishable by death or penal servitude are declared to be felonies (s. 9) and all other offences punishable under the Act are misdemeanours (s. 10).

**Miners, Accident Relief** (No. 42). (*r*)—This is an Act to provide for allowances to persons injured by mining accidents and the relations of persons killed or injured by such accidents, and for that purpose to provide for contributions by owners of mines and persons employed in or about mines and out of the Consolidated Revenue Fund. The Act provides for the constitution of a committee for each mine in or about which fifteen or more persons are employed, to consist of a Government inspector, three persons employed about the mine, to be appointed by the employees, and two persons who may be appointed by the owners (s. 4). The manager is to deduct fourpence-halfpenny a week from the wages of each person employed, and pay the amount to the committee (s. 5), who may grant certain allowances in case of death or disablement caused primarily by any accident occurring in or about the working of the mine (s. 6). A Miners' Accident Relief Board is also constituted (s. 8), to consist of six members appointed by the Governor, their duties being to administer the fund vested in them (s. 11). Into this fund are to be paid (1) by every mineowner ten shillings per head per annum on the average daily number of persons employed; (2) out of the Consolidated Revenue an equal amount; and (3) by the committees the moneys in their hands not required for allowances. For the first twelve months any deficiency may be covered by a gift or loan from the Consolidated Revenue (s. 12). Provision is made for actuarial examination as to the solvency of the fund, and for an increase or reduction in the allowances accordingly (s. 14), and for the making of regulations (s. 15).

**Dentists** (No. 45).—By this Act provision is made for the constitution of a Dental Board and for the registration of persons duly qualified to practise as dentists, and the prevention of persons using the name of "dentist" unless duly qualified.

**Companies** (No. 47).—This Act is a transcript of the Imperial Companies Act, 1898, (*s*) and empowers the Court to grant relief where no sufficient contract has been filed with the registrar under s. 57 of the Act of 1874 (No. 19), or s. 55 of the Act of 1899 (No. 40), (*t*) the terms of which sections are practically identical with those of s. 25 of the Imperial Act of 1867. (*u*)

(*r*) Amended by No. 71 of 1901, see *infra*, pp. 463-469.

(*t*) See *supra*, p. 455.

(*s*) See *supra*, pp. 16-17.

(*u*) 30 & 31 Vict. c. 131.



**Pacific Cable** (No. 48).—This is an Act to enable the Government of New South Wales to join with the Governments of Great Britain,<sup>(x)</sup> Canada, Victoria, Queensland, and New Zealand in the cost of the construction and maintenance of an all-British cable between Canada and Australasia across the Pacific Ocean, provided the total cost do not exceed £2,200,000, and that the contribution of New South Wales do not exceed one-ninth of such cost.

**Supreme Court Procedure** (No. 49).—This is a short Act making some amendments in procedure. It enables issues of fact to be tried and damages or compensation to be assessed by a judge without a jury by consent of both parties, while power is given to the judge notwithstanding such consent to order trial by jury. It also introduces an originating summons into the equity practice.

**Truck Act** (No. 55).—This is an Act to regulate contracts made with respect to, and the payment of, wages, and to prohibit such payment being made otherwise than in money, and to regulate the service of legal process in respect of the non-payment of wages.

**Census** (No. 65).—This Act makes provision for taking a census for the State on March 31, 1901, and for obtaining certain statistics and particulars relating to live stock and crops and the occupation of land, and certain businesses and occupations, for the year 1901, and subsequent years.

**Inscribed Stock** (No. 69).—This Act, after reciting certain provisions of the Imperial Act intituled the Colonial Stock Act, 1877,<sup>(y)</sup> and of the New South Wales Act intituled the Inscribed Stock Act of 1883, enacts that the Colonial Treasurer shall pay the amount of any judgment or order recovered in England.

**Federal Elections** (No. 73) <sup>(z)</sup>.—This Act provides for the election in the State of members of the Federal Parliament, and enacts that a member of Parliament shall be incapable of being elected or sitting in the State Parliament.

**Old Age Pensions** (No. 74).—This Act, after reciting that "it is equitable that deserving persons who during the prime of life have helped to bear the public burdens of the Colony by the payment of taxes, and by opening up its resources by their labour and skill, should receive from the Colony pensions in their old age," makes elaborate provisions for the payment of pensions out of the Consolidated Revenue to certain persons of sixty-five years or upwards, or (in case of physical unfitness to earn a living) of sixty years and upwards, who have resided continuously in the colony for the past twenty-five years (ss. 9, 10). The pensioner must be of good moral character, and must for the

(x) See *supra*, pp. 90-91.

(y) 40 & 41 Vict. c. 59.

(z) Confirmed by Imperial Act of 1901, No. 29, *supra*, p. 77, and see *infra*, p. 476.

preceding five years have led a sober and reputable life. His income must not amount to £52, nor his net capital to £390. No pension shall commence before July 1, 1901 (s. 9). In ordinary cases the amount of the pension shall be £26 per year, diminished (1) by one pound for every complete pound of income above £26; and (2) where the pensioner has any income, by one pound for every complete £15 of the net capital value of all his accumulated property; and where a husband and wife are each entitled to a pension, the amount payable to each shall, unless they are living apart, be £19 10s. per year, subject to similar diminution (s. 11). The Colony may be divided into districts (s. 6) and a board of three persons be appointed for each district (s. 8), whose duty it shall be to investigate claims (ss. 17-27). The pension being for the personal support of the pensioner, shall (subject to forfeiture, etc.) be absolutely inalienable, whether by assignment, charge, execution, bankruptcy, or otherwise (s. 43). Pensions shall not be granted to (1) aliens; (2) naturalised subjects, unless naturalised for ten years before the date of their claim; (3) Asiatics, whether naturalised or not; or (4) aboriginal natives (s. 51).

**Companies (Death Duties)** (No. 76).—This Act makes certain amendments in the Act of 1899 (No. 53). (a) It repeals s. 4 of the principal Act, which required certain foreign companies to keep a list of their shareholders, with certain particulars (s. 2), and provides that on receiving notice of probate or administration such companies shall return to the Commissioner of Stamps, and pay duty on, the holdings of deceased shareholders (s. 3). It also remits the death duty where the value of the member's shares and stock does not exceed £1000; and such duty shall not be payable when the only pastoral business carried on by the company relates to property fallen into its hands by foreclosure or conveyance of the equity of redemption (s. 4). Duty duly paid by a company shall be deemed to be paid on behalf of the personal estate of the deceased member (s. 5). Where the value of shares or stock held is between £5000 and £6000 the duty is raised from 2 to 3 per cent. (s. 6).

**Banks Half-Holiday** (No. 80).—This Act provides that any bank, with permission of the Colonial Treasurer and on giving certain notice by advertisement, may close the bank or any branch to business on any afternoon.

**Early Closing** (No. 81). (b)—This Act of nineteen sections makes various alterations in the Early Closing Act, 1899 (No. 38). (c) It contains numerous minute regulations, and provides for the taking of a poll in a "country shopping district" to decide which day of the week

(a) As to this Act, see *supra*, p. 456.

(b) See *infra*, p. 491.

(c) A summary of this Act is given, *supra*, p. 455.



shall be the late and which the early closing day, each shopkeeper and each assistant above eighteen years old having one vote.

**1901** (*d*)            Acts passed—Public, 75; Private, 2.

**Consolidating Acts.**—Of seventy-four Statutes which became law in 1901, forty-one were consolidating Acts, by which the total repeal of one hundred and thirty Acts and one Ordinance was affected. Several of these consolidating Acts deal with the jurisdiction and procedure of the Courts. Thus, No. 4 consolidates the enactments relating to the district courts, and No. 24 (the Equity Act) those relating to the equitable jurisdiction of the Supreme Court. Other consolidating Statutes deal with police offences (No. 5), interpleader (No. 7), the remedies of judgment creditors (No. 8), vagrancy (No. 13), the recovery and remission of fines and penalties (No. 16), the law of inheritance (No. 19), the law of defamation (No. 22), remedies on bills of exchange and other negotiable instruments (No. 42), prohibition and mandamus (No. 44) and married women's property (No. 45). Various Statutes relating to women and children are consolidated by the Infant Convict's Adoption Act (No. 15), the Deserted Wives and Children Act (No. 17), the Destitute Children's Society Act (No. 36), the Reformatory and Industrial Schools Act (No. 38), (*e*) and the State Children Relief Act (No. 61). The Stock Act (No. 27) consolidates the Statutes relating to diseases in cattle and sheep, to the importation and exportation of stock, and to the registration of brands. The Navigation Act (No. 60) contains 172 sections, by which the provisions of nine repealed Statutes are re-enacted.

**Coroners Act** (No. 54).—This Act gives coroners and deputy-coroners, by virtue of their office, the powers, and imposes on them the duties, of a justice of the peace. It also declares that all stipendiary and police magistrates shall have the powers and duties of a coroner in all parts of the State except the metropolitan district. Further, it amends the law relating to coroners' inquisitions.

**Demise of the Crown Act** (No. 57).—This Act provides that the holding of any office under the Crown shall not be affected, nor any fresh appointment thereto rendered necessary, by the demise of the Crown.

**Public Works Committee Election Act** (No. 58).—This Act makes certain provisions for the nomination and election of members of the Legislative Assembly and Legislative Council, to serve on the Parliamentary Standing Committee on Public Works.

(*d*) Contributed by E. L. de Hart, Esq.

(*e*) Repealed by No. 16 of 1905, *infra*, p. 488.

**Industrial Arbitration Act (No. 59). (e<sup>1</sup>)**—This Act, though to a large extent modelled on the celebrated New Zealand Industrial Conciliation and Arbitration Act of 1894, differs materially from that Act and from the New Zealand Act of 1900 (No. 51) (f) which took its place, and also from the Industrial Conciliation and Arbitration Act of Western Australia (1900, No. 20). (g) It consists of forty-seven sections, and is therefore much shorter than any of the Acts just mentioned, partly because it does not introduce the system of conciliation boards which has been established in New Zealand and Western Australia.

The purpose of the Act is stated to be to provide for the registration and incorporation of industrial unions, and the making and enforcing of industrial agreements; and to constitute a Court of Arbitration for the hearing and determination of industrial disputes, and matters referred to it.

An “industrial dispute,” as defined in the Act, means a dispute in relation to “industrial matters” arising between an employer or industrial union of employers on the one part, and an industrial union of employees or a trade union or branch of a trade union on the other part, and includes any dispute arising out of an industrial agreement.

The definition of “industrial matters” is very wide. The term means “matters or things affecting or relating to work done or to be done, or the privileges, rights, or duties of employers or employees in any industry, not involving questions which are or may be the subject of proceedings for an indictable offence.” In particular, the following matters are included:—

- (a) The wages, allowances, or remuneration of any persons employed or to be employed in any industry, or the prices paid or to be paid therein in respect of such employment;
- (b) The hours of employment, sex, age, qualification, or status of employees, and the mode, terms, and conditions of employment;
- (c) The employment of children or young persons, or of any person or persons or any class of persons in any industry, or the dismissal of or refusal to employ any particular person or persons or class of persons therein;
- (d) Any established custom usage of any industry, either generally or in any particular locality;
- (e) The interpretation of an industrial agreement (s. 2).

An “industrial union” must, for the purposes of the Act, be registered and incorporated (s. 2). To be capable of registration an industrial union must be (1) a person or incorporated company, or an association of persons, companies, or persons and companies, which has

(e<sup>1</sup>) See *infra*, p. 487.

(f) See *infra*, vol. ii. pp. 238, 240.

(g) See *infra*, vol. ii. pp. 180-181.



for six months, on a monthly average, employed not less than fifty employees; (2) a trade union or association of trade unions; (3) a branch of a trade union of sufficient importance to be registered separately.

A registered industrial union becomes a body corporate, and may own, and deal with, real and personal property; but it cannot be sued, nor can its property be taken in execution, except by process under the Act, and in respect of obligations incurred in the exercise of powers conferred by the Act (s. 7).

An industrial union may make an agreement in writing relating to an industrial matter with another industrial union or with an employer, for a period not exceeding three years; and such agreement (called "an industrial agreement") will be binding during its currency on all the members of the union, and have the same effect as an award of the Court of Arbitration. An industrial agreement will also remain in force after the period for which it was made, until determined by one month's notice by one of the parties (ss. 14, 15).

The Court of Arbitration created by the Act to determine industrial disputes and references under the Act is to consist of three members; one, the president, a judge of the Supreme Court appointed by the Governor; the other two, persons appointed by the Governor on the recommendation of the industrial unions of employers and employees respectively (ss. 16, 17). The manner in which delegates are to be chosen by the industrial unions to nominate judges is regulated by Schedule II.

The Court must determine all matters referred to it "according to equity and good conscience," and extensive powers of making rules for its procedure are given to it (s. 26). No matter may be referred to the Court, nor may any application be made to it, except by an industrial union or by a person affected or aggrieved by an order of the Court (s. 28).

The Court has power by its award (1) to fix a minimum rate of wages for the period during which the award is binding (to which an exception may be made in the case of employees who are unable to earn the minimum wage); (2) to direct that as between members of a trade union and other persons offering their labour at the same time the former are to be preferentially employed, "other things being equal" (s. 36).

With a view to the enforcement of its awards or orders, the Court may—

- (1) Declare that any practice, regulation, custom, term of agreement, or condition of employment shall be a common rule of an industry;
- (2) Order that such common rule shall within a prescribed area be

- binding on all employers and workmen engaged in such industry;
- (3) Fix penalties for any breach of such common rule;
  - (4) Restrain any person from disobeying any order or award of the Court;
  - (5) Cancel the registration of an industrial union;
  - (6) Deprive any one of his membership of an industrial union for a specified period;
  - (7) Fix penalties for a breach of any term of an award or order, not exceeding £500 in the case of an industrial union, or £5 in that of an individual member thereof;
  - (8) Impose a fine not exceeding £500 on any person, not a member of an industrial union, for breach of an award or order by which he is bound.

S. 34 is intended to prevent strikes or lock-outs, and as it is somewhat loosely worded, it is advisable to cite the exact words of the section. They are as follows:—

Whoever (a) before a reasonable time has elapsed for a reference to the Court of the matter in dispute; or (b) during the pendency of any proceedings in the Court in relation to an industrial dispute—

- (1) Does any act or thing in the nature of a lock-out or strike; or suspends or discontinues employment or work in any industry; or
  - (2) Instigates to or aids in any of the above-mentioned acts;
- shall be guilty of a misdemeanour, and upon conviction be liable to a fine not exceeding £1000, or imprisonment not exceeding two months:

Provided that nothing in this section shall prohibit the suspension or discontinuance of any industry or the working of any persons therein for any other good cause.

S. 35 makes an employer who dismisses any employee by reason merely that he is a member of an industrial union, or is entitled to the benefit of an award or agreement, liable to a maximum penalty of £20 for each employee so dismissed; and the onus of satisfying the Court that the employee was dismissed for some other reason is on the employer. No proceedings can, however, be begun under either s. 34 or s. 35 without leave of the Court.

By s. 40 the property of any industrial union is liable to answer any award or order by which it is bound. If the property of the union is insufficient, the members are liable to the extent of £10 each for the deficiency.

**Forfeiture of Leases Act (No. 66).** (*g*<sup>1</sup>)—The principal clause of this Act imposes restrictions on, and provides for relief against, the forfeiture of leases, in the exact terms of s. 14 of the English Conveyancing Act, 1881. (*h*)

(*g*<sup>1</sup>) See *infra*, p. 487.

(*h*) 44 & 45 Vict. c. 41.



**Real Property and Conveyancing Amendment Act (No. 68).** (*h*<sup>1</sup>)—This Act gives deputy registrars and any other persons appointed by the Governor the powers of the Registrar-General. It also gives a statutory declaration made before the Registrar-General or a deputy registrar the same effect as if made before a justice.

**Blockholders Act (No. 69).**—This Act provides that any Crown lands may be set apart for leasing to working men in blocks none of which may exceed ten acres. Each lease is to be for ninety-nine years at a rent (payable in advance) not exceeding 5 per cent. of the capital value of the land. One of the conditions of the lease must be that the lessee, either himself or by his wife or child, shall reside on the land at least nine months in each year (ss. 3, 6). A lessee, or assignee of a lease, must "gain his livelihood by his own labour" and be at least eighteen years old (s. 4). The Act creates a special fund to be called the "Blockholders' Loan Fund," from which advances may be made to blockholders to aid them in erecting permanent buildings on their blocks (ss. 9-15). Any sub-lease or encumbrance made while such an advance is not fully repaid is void (s. 17). A blockholder may have his lease endorsed with the words "The land herein comprised is held as a homestead block," the effect of which is that no subsequent encumbrance will be valid and that the land will not be available for the payment of debts subsequently incurred by him, except in respect of rates and taxes.

**Western Lands Act (No. 70).**—This Act vests the management and control of the Crown lands in the Western Division in a board to be called the Western Lands Board. Existing leases may be extended and new leases granted until the 30th June, 1943. In the case of new leases, the rents are to be fixed for periods not extending ten years, and in that of extended leases, for the periods ending on the 30th June, 1930, and the 30th June, 1943. On each re-appraisalment the rent may neither be increased nor decreased more than 25 per cent. The payment of rent may be postponed on the recommendation of the Board, with or without fine or interest. Tenant-right may be granted to lessees in certain improvements—viz., wells, tanks and dams, scrubbing, clearing noxious growths, ring-barking, and fencing.

**Miners' Accident Relief (Amendment) Act (No. 71).**—This Act extends the definition of "mine" in the Miners' Accident Relief Act, 1900, (*i*) so as to include any works in the neighbourhood of a mine where ore, coal, or shale is treated by the owners of the mine. S. 4 of the principal Act instituted a committee for each mine, in or about which fifteen or more persons are employed, to administer the relief fund. S. 3 of this Act authorises the appointment of a joint committee for two or more

(*h*<sup>1</sup>) See *supra*, p. 458.

(*i*) See *supra*, p. 461.

mines, if desired by a majority of the workers in each of the mines. By s. 6 the contribution of the mine-owner to the relief fund is altered, and is fixed at one-half of the miners' contribution. S. 10 amends the scale of allowances from the fund, as fixed by the Schedule to the principal Act.

**Friendly Societies (Further Amendment) Act (No. 73).**—This Act (*l*) modifies the conditions with which certain friendly societies existing at the commencement of the Friendly Societies Act, 1899, (*l*) have to comply, in order to be registered.

**Shearers' Accommodation Act (No. 74).**—This Act makes provision for the proper accommodation of shearers in connection with sheds where six or more of them are employed, and for the inspection of the buildings provided for the purpose.

**Mines Inspection Act (No. 75).** (*m*)—This Act applies to all mines except coal and shale mines, and is intended to make better provision for their regulation and inspection. It consists of seven parts.

Part I. is preliminary.

Part II. relates to managers and engine-drivers. Every mine in which more than ten persons are employed below ground must be under the charge of a certified manager, and the machinery in use at any mine must be under the charge of a certified engine-driver. Further, it is an offence for any one who is deaf, whose sight is defective, or who is subject to fits, giddiness, or any other infirmity likely to interfere with his duties, to be in charge of the machinery, or for any one else knowingly to employ him in such charge. An inquiry may be held into the conduct of a manager or engine-driver who is charged with incompetence or negligence, or has committed an offence under the Act; and his certificate may be cancelled.

Part III. relates to employees. Boys under fourteen and females may not be employed in or about a mine; males under eighteen may not be employed in caging or uncaging trucks or skips on cages, nor as landers or bracemen at any plat or landing-place. Further, no person may work in the face of the workings until he has had two years' experience of such work under skilled workmen, or unless accompanied by a skilled workman, or unless he has been employed for two years in or about the face of the workings. The owner or manager must keep a register of the boys employed about the mine. No person other than an owner or manager may be employed below ground more than eight hours in any day, unless there were special circumstances making it necessary for the safe and proper working of the mine; nor may a person in charge of machinery be employed more than eight hours

(*k*) See *infra*, p. 479.

(*l*) See *supra*, p. 455.

(*m*) See *infra*, p. 484.



consecutively, or more than eight hours in any twenty-four, except when changing shifts, or in cases of emergency.

Part IV. deals with the inspection of mines, the making and deposit of plans of the workings, notices of the opening and abandonment of mines, inspection of boilers, accidents, and lead poisoning.

Part V. relates to drainage.

Part VI. contains general rules which, so far as may reasonably be practicable, are to be observed in every mine.

Part VII. deals with legal proceedings under the Act.

**1902** (*n*)      Acts passed—Public, 119; Private, 6.

**Consolidating Statutes.**—The process of consolidating the Statute Law of New South Wales was continued in the Session of 1902. Of the ninety-nine public Acts which were passed, fifty-eight are described as consolidating Acts, and they repeal one hundred and thirty-seven older Statutes. Some of these consolidating Acts, however, only take the place of a single measure. For the Legislature of the Colony, when some provisions of a Statute have become unnecessary or have been superseded by later enactments, instead of repealing the superfluous sections, often prefer to repeal the whole measure and re-enact the provisions that remain operative in a “consolidating” Act. Thus, the Common Carriers Act (No. 48), described as “an Act to consolidate the enactments regulating the rights and liabilities of Common Carriers by land,” repeals the Common Carriers Act of 1878, and simply re-enacts all of its provisions, except one in s. 9 relating to the payment of money into court, which is omitted because it has been superseded by various other Acts. Another Act (No. 46), described as “an Act to consolidate enactments relating to dedication by user,” repeals a single-clause Act (45 Vict. No. 15), and re-enacts it with the addition of a short title.

The most important of the consolidating Statutes deal with the enactments relating to arrest on mesne process (No. 24); the control and management of the public finances (No. 25); the law relating to magistrates and justices, including the jurisdiction of Courts of Petty Sessions, the powers of police magistrates and justices, procedure, appeals from justices, and proceedings against justices (No. 27); arbitration (No. 29); public health (No. 30); the Acts relating to the Constitution, the subjects included being the powers of the Legislature, the Legislative Council and Legislative Assembly, the functions of Executive Councillors, the Consolidated Revenue Fund, and the appointment of public officers (No. 32); Parliamentary franchise and elections (No. 34);

(*n*) Contributed by Edward Louis de Hart, Esq.

the establishment and regulation of labour settlements on Crown lands (No. 44); the rights and liabilities of common carriers (No. 48); water rights (No. 51); the enactments relating to agreements made elsewhere for personal service in New South Wales (No. 58); the enactments relating to master and servants (No. 59); the liability of innkeepers (No. 64); the sale and use of poisons (No. 65); piracy (No. 69); the regulation of coal mines (No. 73); vagrancy (No. 74); the enactments relating to nuisances from the smoke of furnaces (No. 77); and those relating to noxious trades (No. 82).

**Rabbits.**—No. 6 (*n*<sup>1</sup>) contains the whole law upon the subject of extinguishing this pest, and repeals the Acts of 1890 and 1900. (*o*) Infested districts are proclaimed by the Governor, and thereupon a rabbit board shall be constituted to carry out the provisions of the Act. The expenditure of the board, beyond the amount received from “fines, penalties, and other revenues,” is met by a “rabbit rate upon sheep and large stock.” Only half rates are levied in respect of any holding enclosed by a fence which, in the opinion of the board, is rabbit-proof. The Government may subsidise the work of the rabbit boards either by grants to their funds or in the form of wire netting or other materials used in the construction of rabbit-proof fences, or any machinery, plant, or substances for the destruction of rabbits. The rabbit board, besides requiring the erection of fences, may itself place and maintain them. They may be placed across roads, provided that a rabbit-proof gate allows for the passage of traffic. Owners or occupiers of land are also required to take measures for the destruction of rabbits, and in default the rabbit boards may carry out the requirements of the Act. Inspectors are appointed to secure its enforcement. The Governor may declare any animal, bird, or reptile to be a natural enemy of the rabbit, and on that account to forbid any one wounding, killing, or capturing, selling or disposing of any such animal, bird, or reptile without a special permit.

**Closer Settlement.**—No. 7 (*p*) authorises the acquisition for purposes of settlement of private lands or lands leased from the Crown, and provides for dealing with such lands. Any owner of private land may offer to sell land to the Government and arrangement is made for full inquiry by the board constituted under the Crown Lands Act, 1884, into the terms of the offer.

All lands acquired by purchase under this Act shall be divided into farms of an area not greater than six hundred and forty acres or into such greater areas as the Minister, on the advice of the board, may direct; and the standard to be adopted in regulating the area of each such farm shall be that the lessee thereof may, by agriculture, or by agriculture combined

(*n*<sup>1</sup>) See *infra*, p. 490.

(*o*) See *supra*, p. 460.

(*p*) See *infra*, p. 485.



with any other ordinary pursuits, be enabled to establish and maintain his home thereon . . .

Conditions are laid down as to the requisite qualifications for lessees, and report is to be presented to Parliament of proceedings under the Act.

**Diseases of Animals Act.**—The particular object of No. 11 is the eradication of tick among animals, but the Governor may extend its provisions to any other disease except sheep scab. Inspectors are appointed to secure the efficient carrying out of the measures deemed to be necessary to secure the purpose of the Act.

**Wharfage and Tonnage Rates.**—The law on the subject is consolidated in No. 16, repealing Acts of 1888 and an amending Act of 1899. The Act permits the Governor to let or farm by public auction, upon such terms as the Treasurer may think fit, the wharfage and tonnage rates payable at any public wharf for any term not exceeding five years.

**Benefit Building, Trading, and Industrial Societies.**—No. 17 is a consolidating Act, divided into three parts, dealing with benefit building, loan and investment societies and co-operative trading and industrial societies. The Act does not to any considerable extent modify the law as continued in the Friendly Societies Act, 1873, (q) which it repeals.

**Gaming and Betting Houses.**—Three Statutes are incorporated in No. 18, but no important change is effected in the consolidation.

**Native Dogs.**—Two Acts relating to the destruction of native dogs and the laying of poisoned baits are consolidated in No. 19.

**Legitimation of Children Act (No. 23).**—This Act enables the father of an illegitimate child, who has married its mother after its birth, to legitimate the child by making a statutory declaration in the prescribed form and having it registered (ss. 3, 7). A child may be thus legitimated after death, in which case its issue will take, by operation of law, all property which would have accrued to the issue if the parent had been born in wedlock (s. 4); but no interest in property to which any person has become entitled by any disposition before the passing of the Act, or by devolution of law on the death of any person before the passing of the Act, is to be affected by the Act (s. 5). It is also expressly provided that no child can be legitimated if at the time of its birth there existed any legal impediment to the intermarriage of the parents (s. 6). The benefit of the Act is extended to illegitimate children born before it was passed.

**Women's Franchise Act (No. 54).**—This Act confers the right to vote at elections of members of the Legislative Assembly upon women. This it effects by declaring that the expression "male person" in the

Parliamentary Electorates and Elections Act of 1893 shall be read "male or female person." The right is not to be exercised until the next general election, and it is expressly provided that women are not qualified to be nominated or elected as members.

**Scaffolding and Lifts Act (No. 91).**—This Act relates to scaffolding, engines, and gear used in building operations, and to lifts. Its operation is limited to such districts as may be directed by proclamation. No scaffolding or lift may be erected until after notice to an inspector (ss. 5, 8), and all scaffolding and engines, and the gear connected therewith, must be in accordance with the regulations in the schedules (s. 6). They are to be inspected from time to time, and the inspector may order work to cease on any of them on the ground of danger to human life or limb, or of non-compliance with the regulations (ss. 9, 10). An appeal from the order of an inspector is given to the Government architect. Further, every driver in charge of a steam crane used in connection with building operations must have a certificate, granted by the Government architect after inquiry and examination as to his trustworthiness and competence (s. 11). In view of the difficulties which the English Courts have had in determining the meaning of the term "scaffolding" in the Workmen's Compensation Act, the definition thereof in this Act deserves to be noticed. "Scaffolding" is defined to mean "any structure built up and fixed to a height exceeding eight feet from the horizontal base on which it is built up and fixed, for erecting, demolishing, altering, repairing, cleaning, or painting buildings and structures, and shall include any swinging stage intended to be used for any of the aforesaid purposes."

**University and University Colleges Act (No. 92).**—The object of this Act is to give students of training schools established under the Public Instruction Act of 1880, and other persons training for the position of teacher under the Department of Public Instruction, the privilege of attending university lectures on arts or science without paying fees.

**Registration of Firms Act (No. 100).**—This Act requires every firm carrying on business in New South Wales under a firm-name other than the full or usual names of the partners, and every person trading under any firm-name other than his full or usual name, to register the name under which the business is carried on (s. 4). Registration is to be effected by sending to the Registrar-General a signed and attested statement, setting out (1) the firm-name; (2) the nature of the business; (3) the place where the business is to be carried on; (4) the full name, residence, and other occupation (if any) of each of the persons carrying on the business; (5) if the business is commenced after the Act comes into operation, the date of its commencement (ss. 5, 6). When a change takes place in the constitution or name of a registered firm, the



registration must be renewed (s. 8). A penalty is imposed for default in registration without reasonable excuse (s. 10), and any person making a false return under the Act is guilty of a misdemeanour, and liable to imprisonment for a term not exceeding two years (s. 13). Any firm or person making default under this Act who brings an action shall be ordered by the Court to register the firm-name, and the Court may stay the action until the order be complied with, or allow it to be continued on an undertaking to comply with the order (s. 11). A register of the statements made under the Act, with an index of the firm-names, is to be kept, and may be inspected; copies or extracts may be made, and inquiries by post in reference to any registration, accompanied by the prescribed fee, must be answered (ss. 16-18).

**Wine Adulteration Act, 1902 (No. 107).**—This Act contains very stringent provisions to prevent the adulteration of wine or the sale of adulterated wine.

**Fisheries Act (No. 119).**—This Act remodels the law relating to the fisheries of New South Wales. It substitutes for the Commissioners of Fisheries a Board of ten members to be called the Board of Fisheries for New South Wales. It gives the Board power to fix a close time on any tidal or inland waters, either as regards fishing generally or fishing with nets and lines; prohibits salmon or trout fishing in inland waters except by rod and line; and forbids the use of fixed engines for catching salmon or trout in any inland or tidal waters. It authorises the leasing of Crown lands for oyster culture, and enables the Board to use Crown lands for experiments in the culture and propagation of fish and oysters, and to take steps for the discovery of fishing grounds and oyster-beds. It gives the Governor wide powers to make regulations dealing, *inter alia*, with the weight or dimensions of marketable fish, the mode of fishing, the user of oyster-beds by the lessees, and the prevention of the destruction of fish by the pollution of waters.

## 1903 (r)

Acts passed—Public, 21; Private, 4.

**Influx of Criminals Prevention (No. 6).**—This Act applies to certain prohibited immigrants defined in s. 3, sub-ss. (e) and (f) of the Commonwealth Immigration Restriction Act, 1901, (s) viz. persons who have within three years been convicted of an offence (not being a political offender) and have been sentenced to imprisonment for one year or longer, and any prostitute or person living on the prostitution of others. The entry of such immigrants into the Commonwealth is prohibited. If any prohibited immigrant is found within the

(r) Contributed by the Parliamentary Draftsman of the State.

(s) See *supra*, pp. 414-416.

Commonwealth in contravention of the Act, he is, under the Commonwealth Act, liable to be convicted and imprisoned.

The New South Wales Act provides that if any person so convicted comes into New South Wales within three years after the termination of any imprisonment suffered by him in respect of such offence, he shall be guilty of an offence against the Act.

The Act also applies to any person who in any other State of the Commonwealth has been convicted of any offence for which in that State he was liable to suffer death or to be imprisoned for one year or longer.

A person on being convicted of an offence against the Act is liable to imprisonment for twelve months and to be deported, but may be released from imprisonment for the purposes of deportation, or on entering into recognisances with sureties to leave New South Wales and not return within three years, or to be of good behaviour for five years. If the person breaks his recognisances, or having left New South Wales returns within three years, he is guilty of an offence against the Act.

Masters of vessels bringing into New South Wales any person who, to their knowledge, has been convicted in any other State of the Commonwealth of an offence for which in that State he would be liable to suffer death or to be imprisoned for one year or longer, is liable to a penalty of £100 and to be imprisoned for six months.

Power is given on the warrant of a justice to search houses and vessels, and to apprehend persons suspected of being guilty of an offence against the Act.

**Public Service (Superannuation) (No. 8).**—S. 2 of the Act provides for the future payment of pensions. Under the Civil Service Act of 1884 a Superannuation Account was established to which civil servants paid 4 per cent. of their salaries, being entitled to be paid out of the fund a pension on their retirement on attaining the age of sixty, or on their offices being abolished.

By the Public Service Act of 1895, the payment of pensions was abolished as to persons joining the service after the passing of that Act, but the Superannuation Account was heavily burdened by pensions then payable and to become payable under the former Act.

For reasons partly attributable to the original scheme of contribution, and partly attributable to the various dismissals and retrenchments of the Government, the money at credit of the account has sunk lower and lower, and, by s. 2 of the Act, provision is made that on the Superannuation Account becoming exhausted, payments formerly made into and out of that account shall be made into and out of the Consolidated Revenue Fund.

Under s. 6, a contributor to the Superannuation Account may cease



contributing, in which case there will be paid on his resignation or death a refund of the amount of his contributions with interest, and a gratuity on the scale provided by the Consolidation Act of 1902. S. 4 enables gratuities to be paid to railway officers who ceased to contribute to the account. S. 5 enables certain persons to be reinstated on the fund. S. 7 relates to service in the Government printing office, which is to count in computing the amount of a pension or gratuity. S. 3 extends the period during which any person may be temporarily employed in the public service.

**Senators' Elections** (No. 9).—The Act, amending No. 73 of 1900 (*t*), provides, in accordance with the Commonwealth Constitution Act, for the times and places of elections of senators for New South Wales.

**Juvenile Smoking Suppression** (No. 11).—A Bill on this subject has been before the Legislature since 1899. In the form in which it was introduced, it imposed a penalty on young persons under sixteen years of age smoking tobacco in any public place, public conveyance, etc., and a penalty on any dealer supplying any such person with tobacco, cigars, or cigarettes. During its passage the former provision was eliminated, and the Act now provides that any dealer in tobacco, cigars, or cigarettes and any licensed tobacconist or other person who supplies any person actually or apparently under the age of sixteen years with tobacco in any shape or form, cigars, or cigarettes, shall be liable to a fine not exceeding £5.

**Bills of Sale (Amendment)** (No. 12).—This Act amends No. 10 of 1898, (*u*) under which cases of hardship and distress had arisen where a husband had, unknown to his wife, given a bill of sale over the household furniture in use by them. When seizure was effected under such a bill of sale, it frequently left the wife in destitute circumstances. To as far as possible prevent such an occurrence, this measure was introduced and passed into law. It provides that no bill of sale made or given by either of a married couple who are living together shall have any effect, so far as seizure is concerned, as to the household furniture actually in use by either of them, unless the bill at the time of execution is endorsed with the consent of the wife or husband of the maker or giver thereof.

**Reduction of Members Referendum** (No. 13).—The Act provided for a reference to the electors of the question whether the number of members of the Legislative Assembly should be reduced below the number of 125. The form of voting paper in Schedule 1 gave the voter the option of voting for 125 (the present number), or 100, or 90. The vote was to be taken, and was taken on the day fixed for the election

(*t*) See *supra*, p. 462, and repealing Act No. 41 of 1906, *infra*, p. 492.

(*u*) See *supra*, pp. 441–442.

in New South Wales of Senators of the Commonwealth Parliament. The method of voting was to mark the voting paper with the figures 1, 2, and 3, indicating the order of the voter's preference. After the voting, the papers were sent to the returning officer, who determined the result of the voting in the manner prescribed by Schedule 2 to the Act. The manner of counting the votes is an adaptation of that known as the Hare-Clarke system as used in Tasmania. The papers are arranged in three parcels according to the voters' first preference for 125, 100, or 90 members, and unless this count shows that the majority of the votes given in favour of one of the number of members proposed, the papers in the parcel having the least number of votes are distributed among the other two parcels according to the voters' next preferences, and the parcel having after this distribution the greater number of papers determines the result of the vote.

The vote under this Act was taken, and the result was that on the first count a majority of the votes given was in favour of a reduction of the number of members to 90.

**Crown Lands Act Amendment (No. 15).**—The main principle of this Act, which amends the numerous Crown Lands Acts passed since 1884, is to provide that holders of Crown lands under conditional purchase, homestead selection, or settlement lease may be able to extend the areas held by them so that they may obtain what may be described as a "living area." The policy of earlier legislation has been to put the people on the land: the policy of the new Act is to keep them on the land by providing for an extension of their holdings or an extension of the term of their leases where such extension is necessary for the profitable working and use of the land. Very large discretion in granting applications for such extensions is given to the local land boards, and a board may grant an extension of area although in excess of that previously allowed, and although the added land may not adjoin the land already held, but in every case the application must not be granted unless the additional area is necessary for the maintenance of the applicant and his home. The above provisions are chiefly contained in s. 3, and by s. 30 the right to apply for an additional area is extended to the holder of freehold land not taken up under conditional purchase. This extension will principally apply to the older settled parts of the State, and it is hoped will lead to the improvement of inferior lands in the Eastern Division. Directions are given to the land boards as to the exercise of their discretion in granting or refusing applications, and provision is made in s. 4 for setting apart land for the extension of holdings and fixing the prices and rents.

By s. 11, in furtherance of the policy of extending the areas of holdings, power is given to the holder of a conditional purchase,



homestead selection, or settlement lease to acquire by transfer or exchange additional areas, and perform the conditions of residence on any of such holdings.

The terms of settlement leases are, by s. 5, extended to forty years, to count, in the case of an existing lease brought under the section, from the commencement of the original lease. The rent for the first ten years is determined by the Minister, subject to appeal to the Land Board, and at the end of every subsequent period of ten years the rent may be determined by the Board at the instance of the Minister or lessee. Similar provisions are made by s. 6 with respect to conditional leases.

Ss. 7 and 9 relate respectively to the rents of homestead selections and improvement leases. Ss. 8 and 10 provide that the estate of a conditional purchaser, homestead selector, or lessee may, on his death or on his being declared a lunatic, be held by his representative for twelve months without residence.

S. 12 is drawn to give mortgagees and judgment creditors a better security over homestead selections and settlement leases, so as to enable the holders to borrow money. It provides that the mortgagee or creditor shall have twelve months after taking possession, or such further time as the Minister allows, to find a purchaser, and that, in the meantime, the condition of residence may be performed by a nominee of the mortgagee or creditor. Proceedings under the section shall not be taken until two years after the passing of the Act, or until twelve months have elapsed after default by the mortgagor, or after judgment signed.

Ss. 13 and 14 make certain reductions in the interest payable on the balances due on conditional purchases, but only apply where the land is resided upon, and to a "living area."

S. 15 allows the Minister to accept deferred payment of moneys due. S. 16 allows parents to apply for land for their children, and s. 19 provides for residence on family holdings. S. 17 allows a married woman to acquire Crown lands. S. 20 makes new provision as to ballot for applications made simultaneously. S. 21 allows the holder of a residential lease to increase his holding to twenty acres; and by s. 22 homestead selections and settlement leases may be taken up before survey.

By s. 18 the holder of a pastoral lease, preferential occupation licence, or occupation licence may, subject to the conditions of the section, apply for a lease of an additional area not exceeding one-third of his holding, following a similar enactment in the Western Lands Act.

S. 23 enables the holder of an annual lease to apply for an

improvement lease, for seven years, of such portion of his land sufficient to support a family. S. 24 reduces the upset price for auction and after auction sales from 25s. to 15s. per acre.

S. 25 allows a settlement lessee, after five years' tenancy, to apply to convert any area not exceeding 1280 acres of his holding into a homestead selection, but the granting of the application is in the discretion of the Land Board.

S. 26 allows the enclosure of roads. S. 27 allows the holder of a conditional lease in the Eastern Division to take up the whole of the lease as a conditional purchase, although its area may exceed 640 acres.

**Sydney Harbour Trust Leasing.**—No. 16 extends the power of the Sydney Harbour Trust Commissioners to grant leases for any term not exceeding forty-two years at a rent to be increased at the end of each period of fourteen years by 5 per cent. on the amount of the increase (if any) on the unimproved value of the land.

**Friendly Societies** (No. 17). (*w*)—This Act amends the Friendly Societies (Further Amendment) Act, 1901, (*x*) by providing that the provision requiring separate accounts of contributions to and payments from the funds shall relate to members joining before and after January 1, 1903, instead of to members joining before and after the registration of the society, which by the Friendly Societies Act, 1899, (*y*) must be within twelve months from the commencement of that Act.

**Native Animals' Protection** (No. 18).—It was found that certain native animals, owing to inadequate protection, were in danger of becoming extinct. To prevent this, the above-mentioned measure was introduced and passed. It fixes a period of absolute protection, and after that a definite close season for the native animals named in the schedule, and provides that the Colonial Secretary may, by a *Gazette* notice, add to the schedule the names of any other native animals, or remove any name already there.

The Colonial Secretary may also, by a *Gazette* notice, vary the periods of absolute protection or close seasons, and make them conform to the requirements of any particular districts in the State.

S. 11, which affords protection to birds, was added because, although there is a Birds' Protection Act in force, yet under its provisions there was no power conferred of fixing a period of absolute protection for any bird, and it was found that this was necessary to preserve the existence of certain birds, notably the "lyre bird."

**Commercial Causes** (No. 19).—Commercial men had for some time been complaining of the law's delays occasioned by the procedure under the Common Law Procedure Act. In order, as far as practicable, to overcome these, the Attorney-General, in the Upper House, introduced

(*w*) See *infra*, p. 492.

(*x*) See *supra*, p. 469.

(*y*) See *supra*, p. 455.



this Bill. It is modelled upon the Rules of Court dealing with commercial causes now in force in England. As originally introduced, the Bill gave the judge power, *inter alia*, to order every cause to be tried without a jury. This was modified during its passage through the Lower House by the addition of the words "unless a jury shall be demanded by either party." With this exception the Bill passed through all its stages as introduced.

**1904** (z)

Acts passed—Public, 37; Private, 5.

**Claims against the Government and Crown Suits** (No. 4).—In the year 1860, the Legislature of New South Wales, finding that "the ordinary remedy, by Petition of Right, is of limited operation, is insufficient to meet all such cases, can only be obtained in England, and is attended with great expense, inconvenience, and delay," passed an Act, (a) to enable the subject to obtain redress from the Colonial Government in cases of dispute touching any claim. This was repealed by the Claims against the Government Act of 1876, (b) which provided that an aggrieved subject could bring an action against the Government, represented by a nominal defendant, provided he have "any just claim or demand whatever" against the Government. All enactments relating to claims against the Government were consolidated in 1897. (c) This present amending Act provides that the death of a nominal defendant shall not cause an action to abate (s. 2). The Governor shall appoint a nominal defendant within fourteen days of the commencement of the Act if the original defendant should die before such date (sub-s. 1), and within fourteen days of the death of a defendant dying after the passing of the Act (sub-s. 2, s. 2). On such appointment of a nominal defendant all necessary amendments in the record in relation to the new name may be made by order of the Court or judge before which or whom the proceedings are pending (s. 4).

**Ancient Lights** (No. 16).—The English rule of law as to ancient lights, founded on the fiction of a lost grant, was declared to be in force in New South Wales by a decision of the High Court of Australia in the case of *Delohery v. Permanent Trustee Company of New South Wales*. (d) Previous to this (May, 1904) there had been no decision on the point; *obiter dicta* of the judges showed a difference of individual opinion on the subject. As the rule is opposed to the conditions of settlement in a new country, the above Act (assented to December 1, 1904) declares that the enjoyment of the access or use of light to a

(z) Contributed by the Parliamentary Draftsman.

(b) 39 Vict. No. 38.

(a) 20 Vict. No. 15.

(c) 61 Vict. No. 30.

(d) (1904) 1 C. L. R. 283.

building for any period, or any presumption of a lost grant based on such enjoyment, shall not alone create a right to such access or use (s. 1). Legal decisions pronounced before the passing of the Act or actions pending in cases where the question of rights to light had arisen before the date of the Act, shall not be affected by the Act (s. 2).

**Land and Income Tax** (No. 17).—This Act declares that income tax shall be payable on interest owing and paid to a mortgagee of lands in New South Wales, whether the interest is payable or the mortgagee is resident or the mortgage deed is located within or outside New South Wales (sub-s. 1, s. 2); the amount of such income tax shall be deducted from the amount of the land tax payable by the mortgagor, and it shall be paid by the mortgagee if within the State, but if he be resident without the State it shall be paid on his behalf by the mortgagor out of moneys in respect of the interest due to the mortgagee (sub-s. 2, s. 2). In assessing the income tax for the year 1905, and subsequently, the taxable income for the year immediately preceding the year of assessment shall be the taxable amount for the year of assessment (sub-s. 2, s. 3). The first of the directions in s. 27 of the principal Act is repealed (sub-s. 1, s. 3). Under the principal Act (1895) it was provided by s. 53 that any amount of income tax paid by a taxpayer in excess of the sum properly chargeable should be refunded, and that a taxpayer whose income in any year fell short of the sum in respect of which the tax for that year was paid, should obtain a refund of such overcharge; and that where income tax has been claimed and paid upon incomes within the exemption value, a refund may be made or exemption declared; with the provision that claims be brought within two years of the date when overpayment was made. This amending Act repeals the whole of s. 53, and re-enacts only the first part of it providing for a refund where the taxpayer has paid any amount of land tax as well as income tax in excess of the amount properly chargeable; and that claims be brought within three years of the date when the tax was due (sub-ss. 1 and 2, s. 4). Power is given to the Tax Commissioners to remit and refund fines (s. 5).

**Infant Protection** (No. 27). (*d*<sup>1</sup>)—This Act repeals the Deserted Wives and Children Act, 1901, so far as it relates to complaints in respect of illegitimate children and proceedings consequent thereon.

Part II. constitutes the main body of the Act and is intitled "Maintenance of Infants." It deals with proceedings (1) before birth, (2) after birth.

(1) When any single woman is with child by any man who has made no provision for the expenses consequent on its birth or for its future maintenance, she, or with her consent the chief officer or any

(*d*<sup>1</sup>) See *infra*, p. 483.



other reputable person on her behalf, may make complaint in writing on oath to any magistrate. The magistrate may thereupon summon the man to answer the complaint; or if necessary the magistrate may issue a warrant for the man's apprehension. The Court is then to hear and determine so much of the complaint as relates to the paternity of the infant, and may order the defendant to deposit a sum of not less than £20 for expenses in connection with the birth of the child, and further order the defendant to enter into recognisances to appear on a day fixed within four months of the birth of the infant, and show cause why he (defendant) should not make adequate provision for the maintenance and education of the infant after it has reached the age of three months. The Court may enforce compliance with the order by sending the defendant to prison for twelve months.

(2) When the father of an illegitimate child has left it without means of support, a complaint may be lodged in the same way, and the Court may order the defendant to pay a sum for the maintenance and education of the infant and for expenses in connection with the birth. When necessary the Court may order payment of the funeral expenses of the mother and child. The mother may be ordered to contribute to the expenses of maintenance of the infant if she is able. The maintenance may be continued till the child is fourteen if a male and sixteen if a female. The order of the Court may be enforced by seizure and sale of the defendant's goods, or by inflicting a fine of £50. If a defendant wilfully refuses or neglects to comply with an order and goes or attempts to go out of New South Wales, he is guilty of an indictable offence and may be imprisoned with hard labour for twelve months. Persons who desert children in other colonies may be arrested in New South Wales. There is an appeal given to the quarter sessions or the district Court.

Part III. contains provisions for the control of places established or used for the reception of infants.

Part IV. provides that on the hearing of any complaint under the Act the public are not to be admitted to the Court.

Part V. provides that all penalties under this Act shall be imposed and recovered before the Court in the same manner as penalties are imposed and recovered under the Justices Act, 1902, and provides also that the Governor may make regulations for carrying out the provisions of the Act.

**Sydney Harbour Rates Act (No. 26).**—The Sydney Harbour Trust Act (referred to in the present Act as the "principal Act"), although not assented to until February, 1901, and published as Act No. 1, 1901, has received the short title of "Sydney Harbour Trust Act, 1900." Similarly the Wharfage and Tonnage Rates Act, although not assented to until January 24, 1902, and published as Act No. 16, 1902, has

received the short title of the "Wharfage and Tonnage Rates Act, 1901." In the Act under consideration, the above-mentioned erroneous short titles are made use of.

The Act empowers the Sydney Harbour Trust Commissioners constituted under the Sydney Harbour Trust Act (No. 1, 1901) to collect harbour rates on goods brought by sea into the Port of Sydney. The amount of such rates is not to exceed one-half of the inward wharfage rates specified in the Schedule to the Wharfage and Tonnage Rates Act. (e). The rates fixed are payable by the owners or consignees of the goods within forty-eight hours of landing or transshipment, under a penalty not exceeding £50.

Goods arriving from any of the Australasian Colonies or New Zealand are, if entered for transshipment, exempt from wharfage rates under the Wharfage and Tonnage Rates Act, and paid no charges until the passing of the present Act. The present Act imposes upon all goods transhipped in the port a charge of one-half the harbour rate in case the goods are transhipped within fourteen days and the full harbour rate when the fourteen days are exceeded. Where wharfage rates are payable in respect of goods which have already paid harbour rate, the harbour rate is to be deducted from the wharfage rate.

The Act also authorises the imposition of tonnage rates on a fixed scale upon all vessels (except those under two hundred and forty tons and lighters), payable by the owner or agent before the vessel leaves port under a penalty not exceeding £100. The Commissioners are also empowered to make regulations for collecting tolls or charges on berthing from vessels in respect of which tonnage rates are not leviable, either in the form of fixed charges or of licences for a definite period.

Leases of docks, piers, etc., granted by the Commissioners are saved from the operation of the Act.

For the purpose of securing the payment of rates, the Commissioners may make regulations, particularly to prevent the removal of goods; and all manifests must be lodged by masters within twenty-four hours after entering the port under a penalty of £100. Power is also given to enter any place having a frontage to the port and inspect goods landed.

Tonnage is to be calculated in accordance with the Imperial Merchant Shipping Act, 1894, (f) and the latest "Lloyd's Register" is made evidence of such tonnage.

**Coroners (No. 25).**—The Coroners' Court Act provides that all inquisitions hitherto required to be held before a coroner and a jury shall be held before a coroner sitting alone, and for that purpose confers upon a coroner when sitting alone all the powers hitherto vested in him or the jury.

(e) No. 16, 1901.

(f) 57 & 58 Vict. c. 60.



The general enactment is subject to a proviso requiring an inquisition to be held before a coroner and jury (1) on the request of a relative of the deceased, or the secretary of any society or organisation of which the deceased was a member at the time of his death; or (2) on the order of the Minister of Justice.

**Mines (No. 21).** (*f*<sup>1</sup>)—This Act amends the Mines Inspection Act of 1901. (*g*) Where the amount of wages paid to a miner depends upon the amount of the mineral he contracts to get, he shall be paid according to the actual weight of such mineral put out by him, unless the Minister for Mines, on the joint representation of the parties in the case of a mine employing not more than twenty persons underground, authorise some other method of payment.

By agreement between the parties deduction may be made in respect of substances other than the particular mineral sent out of the mine along with it.

Such miner may at his own cost appoint check-weighers to see that the mineral is properly weighed.

Check-weighers are to have all proper facilities for the fulfilment of their duties. Where the check-weigher has been appointed by the majority of such miners he can recover from any one of them still employed in the mine his proportion of the check-weigher's remuneration.

Check-weighers are not to impede the working of the mine, and in case of misconduct can be removed by the order of the nearest Court of petty sessions.

**State Debt and Sinking Fund Act (No. 19).**—The State Treasurer, the Chief Justice, the Speaker of the Legislative Assembly, and the Under Secretary to the Treasury are appointed Commissioners to manage the sinking fund constituted by the Act and certain trust accounts kept in the Treasury.

In lieu of the sinking funds established by various loan Acts there is constituted a general sinking fund to which shall be paid each year £350,000. The balances at credit of the old sinking funds are transferred to the general sinking fund and the old funds are closed.

The fund is to be used in paying off loans, and in the meantime may be invested by the Commissioners.

The trust accounts which by the Act are to be transferred to and administered by the Commissioners are mentioned in the schedule. They consist of moneys which under various Acts are held by the Government on trust for private persons or corporations, or to answer claims which may be made by such persons or corporations, and provision is made for the investment of such moneys and for withdrawals for the purposes of the respective trusts.

(*f*<sup>1</sup>) See *infra*, p. 493.

(*g*) See *supra*, p. 409.

**Closer Settlement Act** (No. 37). (*h*)—This Act consolidates and amends the Closer Settlement Act, 1901. (*i*) The object of both measures is to enable the Government to acquire private land and dispose of it to intending settlers in suitable sub-division blocks. The chief alteration in matter of policy is the mode of acquiring and of disposing of the land. Under the Act of 1901, the only mode of acquiring land was by purchase under contract made by the Government with the approval of the Parliament. These provisions are re-enacted with minor amendments in Part I. of the Act of 1904. But under Part II. of that Act the Government is authorised to take the land required compulsorily.

Under the Act of 1901, the land is disposed of in farms on a leasehold tenure of ninety-nine years. Under the Act of 1904, the settler obtains a conditional fee, which he may mortgage, and which, under the conditions of the Act, may be held by a transferee.

Part I. of the Act deals with the purchase of private land, and substantially re-enacts similar provisions of the Act of 1901.

Part II. deals with the resumption of private land, and is limited to land exceeding £20,000 in value, without the improvements thereon. The Minister is given power to notify the owner of an order of inspection, and after such notification the land shall not be disposed of so as to defeat the power of resumption, but such restriction shall cease if the land is not resumed within twelve months, or if the Governor removes the restriction.

The owner has a right to retain a part of his land not exceeding in value £10,000, exclusive of the value of improvements thereon, but the area and boundaries of the land to be so retained are to be as determined by the Closer Settlement Board. The owner may waive his right of retainer if he is dissatisfied with the finding of the Board. The owner may also, where part only of a contiguous area is proposed to be resumed, require the whole to be taken.

The price is to be settled by the Closer Settlement Board subject to appeal to a Court consisting of a Supreme Court judge and two assessors, the latter to be appointed by the Governor and the appellant respectively.

If Parliament approves, the land is resumed by the Governor and thereupon vests in his Majesty.

Part III. deals with the mode of making payment for land acquired, and for interest and costs.

Part IV. provides for the disposal of the land acquired.

Lands acquired under the Act and adjacent Crown lands are to be classified as agricultural lands, grazing lands, and township settlement

(*h*) See *infra*, p. 494.

(*i*) No. 7 of 1902, see *supra*, p. 471.



allotments, and sub-divided into suitable blocks. The plans and the values of the blocks are submitted by the Board to the Minister and are conclusive.

The settlers who may apply for a block are any male person of or over eighteen years of age or female person of or over twenty-one years of age, but the latter must be either unmarried or widowed or living apart from her husband under an order for judicial separation. The person applying must not be the holder of any other land except town or suburban land, or land under lease or a settlement township allotment under the Act, or held as a tenant from a private holder. Where simultaneous applications are made for the same land, the local land board inquires in open Court into the merits of the applicants, and finally allows or refuses an application.

The conditions to be performed are—

- (a) A deposit of 5 per cent. of the value of the land on application, and an annual payment of 5 per cent. of such value in respect of the purchase money and in respect of interest at the rate of 4 per cent. per annum, until the purchase money and interest are paid.
- (b) Residence for ten years commencing within twelve months after the purchase or within a further time which the local land board may allow. The residence may be on any settlement purchase or township settlement allotment in the same settlement purchase area, or may be permitted in any adjacent village or town.
- (c) Improvements to the value of 10 per cent. of the capital value of the land must be made within two years from the purchase, an additional 5 per cent. within five years from the purchase, and a further additional 10 per cent. within ten years from the purchase.

Provision is made by which the land shall not be held by a person not qualified to make application, and no transfer is allowed in contravention of this provision. But the land may be mortgaged, or may devolve on death; and special provisions are made by which the mortgagee or execution creditor may pursue his remedy against the property, and the personal representatives of a deceased or lunatic holder may perform the conditions annexed to the holding.

Grants are to be issued after fulfilment of conditions and payment of purchase money. Non-fulfilment of conditions renders the holding liable to forfeiture.

Provision is made for the setting apart of lands for a township settlement, to be divided into half-acre blocks, and sold at auction. No person shall hold more than three of such blocks, except as mortgagee.

Power is given to the Minister to grant annual leases in areas not exceeding 320 acres, until the land is required for settlement purchase. The rent is appraised by the land board.

Part V. contains miscellaneous and supplemental provisions, and constitutes the Closer Settlement Board. The Board consists of the president and commissioners of the Land Appeal Court and the chairman and members of the local land board for the land district in which the land under inquiry is situated.

The Act is administered by the Secretary for Lands.

**1905** (*k*)            Acts passed—Public, 43; Private, 7.

**Industrial Arbitration.**—No. 1 makes a small amendment in the Industrial Arbitration Act, 1901, (*l*) in order to provide a temporary Court.

**Juries.**—The Jury Act, 1901, and Amendment Act, 1902, have small amendments made in them by the Jury (Amendment) Act, 1905 (No. 3), as to the liability of persons to be called upon for service.

**Forfeiture of Leases.**—No. 8 amends the Forfeiture of Leases Act, 1901, (*o*) so as to grant relief against the exercise of rights of re-entry and forfeiture under leases, and against defects invalidating certain leases.

**Criminal Law.**—Any person misappropriating funds collected or received is liable to penal servitude for seven years by an Amendment (No. 12) to the Crimes Act, 1900. (*p*)

The Habitual Criminals Act (No. 15) makes special provision for that class of offender. Any criminal who has been convicted on two previous occasions of poisoning, sexual offences, or abortion, and on three previous occasions of certain other crimes, *inter alia*, burglary and false pretences, mentioned in the Crimes Act, 1900, (*q*) may be detained as an habitual criminal during his Majesty's pleasure. Regulations under the Act require him to be set to work at some trade or avocation. Facilities are afforded for the disposal of the products of his labour, which is carried out under prescribed conditions, with the proviso that the habitual criminal shall receive not less than one-half of such net proceeds. Good conduct will lead to release, subject to supervision and liability to re-committal for various petty offences. The places of confinement are prisons within the Prisons Act, 1899, (*r*) and no alcoholic liquor may be brought to them.

(*k*) Contributed by C. E. A. Bedwell, Esq.

(*o*) See *supra*, p. 467.

(*q*) See *supra*, p. 461.

(*l*) See *supra*, pp. 465-467.

(*p*) See *supra*, pp. 460-461.

(*r*) See *supra*, p. 454.



**Children.**—The advance of public opinion as to the care of neglected and destitute children and the treatment of juvenile offenders necessitated an amending Act (No. 16), which repeals the Reformatory and Industrial Schools Act, 1901, (*s*) and modifies the State Children Relief Act, 1901, (*t*) the Children's Protection Act, 1902, the Infant Protection Act, 1904, (*x*) and the Crimes Act, 1900. (*y*) The chief part of the Act provides for the establishment of children's courts to be held in some special room, or else at a time when the ordinary court business is not being transacted (s. 12). The general public may be excluded (s. 13). Among others to be brought before the Court is the "uncontrollable child," defined by the Act to be a "child whom his parent cannot control" (s. 5). In order to obtain the assistance of the Court in sending him to an institution or otherwise providing for the child's care, the parent is required to prove "that he has not by neglect lost control of the child" (s. 23). Part IV. provides for the care of children in institutions. Part V. is concerned with the licensing of children engaged in street trading. Males may be licensed at the age of ten years (s. 47).

**Small Debts Recovery.**—The Small Debts Recovery Act, 1899, (*z*) is amended by an Act (No. 18) in various details and in order to provide for the collection of fees in a Court of Petty Sessions.

**District Courts.**—By amendments to the District Courts Act, 1901, the Common Law Procedure Act, 1899, (*b*) and the Landlord and Tenant Act, 1899, (*c*) the District Courts (Amendment) Act (No. 22) extends the jurisdiction of those courts both in common law and equity matters, and also in probate and matrimonial suits. It also provides for the removal of certain actions from the Supreme Court to the district court, and makes a number of amendments in the procedure of the latter.

**Money-Lenders.**—The Money-Lenders and Infants' Loans Act (No. 24) is a reproduction of the English Money-Lenders Act, 1900, (*d*) and the English Betting and Loans (Infants) Act, 1892.

**Coal Mines.**—An Amending Act (No. 25) of the Coal Mines Regulation Act, 1902, and the Mines Inspection Act, 1901, (*f*) makes further provision for the examination and certifying of winding engine-drivers.

**National Library.**—Act No. 28 makes provision for the erection of a National Library, at a cost of £120,444.

**Local Government.**—For a long time the condition of local government in the State was admitted to be unsatisfactory. The object of

(*s*) See *supra*, p. 464.

(*t*) See *supra*, p. 464.

(*x*) See *supra*, pp. 481-482.

(*y*) See *supra*, pp. 460-461.

(*z*) See *supra*, p. 453.

(*b*) See *supra*, p. 454.

(*c*) See *supra*, p. 453.

(*d*) See *supra*, pp. 63-65.

(*f*) See *supra*, pp. 469-470.

the Local Government (Shires) Act (No. 33) was the establishment of home rule in local affairs throughout the State. With this intention as much as possible was left to the authorities constituted by the Act. By the gradual application of its provisions, and the assumption of their various duties by the local bodies, the endeavour was made to secure the satisfactory working of the Act. The powers to be entrusted to the local councils correspond with those executed by the English county councils.

**Licensing Law.**—By an amendment of the Liquor Act, 1898, (*g*) the law is strengthened in regard to the supply of intoxicating liquor. The Amending Act (No. 40) forbids it to be supplied, *inter alia*, to any person under the age of eighteen years; any aboriginal native of Australia, or any person belonging to any of the coloured races of the South Pacific Islands. No child under fourteen may be sent for liquor (s. 9), and no young person under seventeen is allowed in the bar (s. 10), and no barmaid, other than the wife or daughter of the licensee, may be employed under the age of twenty-one (s. 13). Parts III. and IV. are concerned with the issue of licences, Part V. with the registration of clubs, and Part VI. with the arrangements for the exercise of local option.

**Explosives.**—The Explosives Act (No. 41) repeals the Explosives Act, 1902, and follows the lines of the English Explosives Act, 1875. (*i*)

**1906** (*k*)      Acts passed, 64—Public, 35; Local, 29.

**Dower** (No. 4).—No widow is to be, nor after the commencement of the Probate Act of 1890 to be deemed to have been, entitled to dower out of any land or out of any estate or interest in the same.

**Government Stock** (No. 5).—Holders of Inscribed Stock, debentures, and Treasury Bills of the New South Wales Government redeemable in London may have them transferred from the London to a Sydney register.

**Incorporation of Amendments** (No. 6).—This is an improvement in “the mechanics” of law-making well worthy of attention and imitation. Henceforth, when an Act is amended by the insertion, substitution, or repeal of any words or figures, the Act is to be printed as amended in the form certified by the Attorney-General as correct. There is to be a marginal note referring to the amending enactment.

**Railways** (No. 7).—The present Railway Commission is dissolved and a body corporate, with perpetual succession and a common seal,

(*g*) See *supra*, pp. 445–446.

(*i*) 37 & 38 Vict. c. 17.

(*k*) Contributed by Edward Manson, Esq.



constituted in its place, with the title of Chief Commissioners of Railways and Tramways.

**Education** (No. 12).—Henceforth education in primary and superior public schools is to be free. All fees are abolished.

**Gaming and Betting** (No. 13). (*l*)—Every owner or occupier of any place who knowingly allows it to be used as a common gaming-house, or for playing unlawful games, is liable to a penalty of £100.

Any owner of land or building who has reasonable grounds to suspect that it is being used for gaming or betting, may serve the occupier with a notice to quit, which is to determine the tenancy unless the occupier proves his innocence.

A judge of the Supreme Court may, on affidavit of a police inspector showing reasonable grounds for suspecting a place to be used for gaming, declare it a common gaming-house: subject to the right of the owner or occupier, on proving no contravention of the Act, to have the declaration rescinded.

Notice of the declaration, when not rescinded, is to be published, and any person after such publication seen frequenting the premises may be arrested; the police may also enter and seize any instruments of gaming.

Street betting is made punishable with a fine of from £20 to £100, and betting or wagering on any sports ground other than a licensed racecourse is also prohibited. Betting with infants or sending them circulars is punishable with a fine of £100.

No race meetings are to be held except on licensed racecourses—such licences to be issued by the Colonial Secretary on payment of a fee, on such terms as may be prescribed by the Governor.

**Administration of Estates** (No. 14).—This Act amends No. 13 of 1898 (*m*) and No. 38 of 1900, (*n*) and authorises the judges to delegate certain duties in connection with the probate and the administration of estates to the registrar of the Court.

When an infant is entitled to a share of an intestate's estate, and such share does not exceed £500, the Court may sanction the whole being spent on the infant's maintenance, advancement, or education. An executor's right of retainer is abolished. The Court is also given power to authorise or to carry on administrative or intestates' business.

**Public Holidays** (No. 15). (*o*)—Seven days' notice of these is to be given by proclamation in the *Gazette*.

**Pastures Protection** (No. 20). (*p*)—This is further legislation to abate the rabbit pest. A board of inspectors is constituted for each district, and

(*l*) See *infra*, p. 493.

(*n*) See *supra*, p. 460.

(*m*) See *supra*, p. 443.

(*o*) See *supra*, p. 455.

(*p*) See *supra*, p. 471.

every owner or occupier is to be rated towards rabbit wire-fencing. An owner or occupier who has made a boundary rabbit-proof at his own expense is entitled to contribution from adjoining owners.

**Companies :** (q) *Alteration of Memorandum* (No. 22).—This Act is in four parts. By Part II. companies are given the same power of enlarging their Memoranda of Association, with the sanction of the Court, as is given by the English Companies (Alteration of Memorandum) Act, 1890. (r)

*Foreign Companies.*—Part III. deals with foreign companies—that is, companies incorporated in any other country, colony, or State than New South Wales, and carrying on business in New South Wales. These are, before commencing business, required to register—

- (a) The name of the company and a copy of its memorandum and articles.
- (b) A balance-sheet showing assets and liabilities.
- (c) The name and address of the person appointed to carry on the business, to be called the public officer of the company.
- (d) The situation of the principal office.

The public officer of the company is to be answerable for all the requirements of the Act being complied with.

A foreign company must also file annually a list of debentures or other securities charged on its property and of its stockholders.

*Compromises.*—Part IV. provides for compromises by companies. If a majority of creditors representing three-fourths in value accept such compromise, it is to be binding on the rest, subject to the approval of the Court.

**Judges' Pensions** (No. 27).—Judges of the Supreme Court retiring after fifteen years' service are to be entitled to pension at the rate of one half the salary. For earlier retirement, from disability or infirmity, there is a scale according to the length of service. The pension service for district court judges is twenty years.

**Police Pensions** (No. 28).—This provides for superannuation allowances and gratuities to members of the police force.

**Early Closing** (No. 39). (s)—Hairdressers' shops are allowed to remain open till seven o'clock, when other non-scheduled shops close at six o'clock.

**Secondhand Dealers** (No. 30).—Any person carrying on business as a secondhand dealer (other than a shareholder) without being licensed, is liable to a penalty of £10. The words "licensed dealer in old wares" must be painted on a conspicuous part of the premises. All purchases

(q) A statement of the law relating to companies may be found in a memorandum prepared for the Imperial Conference, 1907. Cd. 3589, p. 24, and see *infra*, p. 494.

(r) 53 & 54 Vict. c. 62.

(s) See *supra*, p. 463.



and sales must be entered in a book and goods suspected to be stolen produced to the police.

Collectors of old wares (which have a very wide definition in the Act) must also have a licence and are subjected to strict regulations.

**Friendly Societies** (No. 31).—These must all register themselves under the Principal Act, 1899. (*t*) Disputes may be referred to the registrar. There are a number of minor amendments.

**Fruit Pests** (No. 37).—This is a further attempt to deal with vine and vegetation diseases. Inspectors may enter any land or building and search for fruit pests, and plants and packages likely to convey them, and report to the Minister, who may take measures for their treatment or destruction.

Certificates of nurseries for plants being free from disease may be given, after inspection, by the Minister.

**Municipalities** (No. 40).—This is an important Act of ss. 105, divided into ten parts. Part I. is preliminary. Part II. deals with the Constitution of Municipalities; Part III. with Endowment; Part IV. with the Powers and Duties of Councils; Part V. with the Constitution and Election of Councils; Part VI. with Valuations and Rates; Part VII. with Funds, Accounts, and Audit; Part VIII. with Loans; Part IX. with Ordinances and Regulations. Twenty-eight matters are set out as to which regulations may be made: *inter alia*, polls, voting, hoardings, gas and electric light, places of public amusement, disorderly houses, sales of fish and milk, public nuisances, abattoirs, public buildings and parks, etc.

Sydney is exempted from the Act.

**Parliamentary Elections** (No. 41). (*t*<sup>1</sup>)—This Act, of sixty-one sections, deals with the making of lists and rolls, additions and alterations, nomination and election, the re-election of Ministers, and allowances to members.

**Fire** (No. 45).—The object of the Act is to prevent carelessness in the use of fire. Whoever ignites or uses, or carries when ignited, any inflammable material within one hundred yards of any stacks of corn, hay, or standing crops in an inflammable condition, or within ten yards of any growing crops, stubble field or grass land in an inflammable condition, or within twenty-five yards of felled timber, is liable, if the property is endangered, injured, or destroyed, to a penalty of £50, or imprisonment for three months.

Regulations may be prescribed for the mixing of phosphorous baits for poisoning rabbits, and the burning of fire-breaks on railway lands.

The sale of matches other than those made to strike only on the box may be prohibited.

(*t*) See *supra*, p. 455.

(*t*<sup>1</sup>) See *supra*, p. 476.

**Savings Banks** (No. 48).—This is an Act of eighty-five sections, constituting and regulating the management of the Government Savings Banks. Loans may be made, on security, for improvement of land and discharge of incumbrances.

**Mining** (No. 49). (*u*)—This is a consolidating Act, dealing with miners' rights and business licences, leases of Crown lands, mining on private lands, dredging leases, tenements and leases generally, warden's courts and appeals. Power is given to the Governor to make regulations on some thirty-five specified matters affecting mining and miners.

**Local Government** (No. 56).—This is also a consolidating Act of two hundred and nine sections, dealing with the local government of municipalities and shires. Power is reserved to the Governor to make Ordinances on some seventy matters.

**Water** (No. 59).—The object of this Act is to make better provision for water conservation, water supply, irrigation, drainage, and the control of flood waters. Channels and embankments may be constructed. Artesian wells are not to be sunk without a licence. If water is being wasted or improperly used, the Minister may direct precautions to be taken to stop such waste.

## 1907 (*x*)

## Public Acts passed—23.

The output of legislation from the Colony during the year 1907 was small, and most of the new law consists of Acts amending previous Statutes. Two important measures, however, were passed, which impose new obligations upon the State for the benefit of the poor, viz. an Act to make provision for pensions in certain cases of illness and accident, and an Act to make provision for the defence of poor prisoners.

**Gaming** (No. 2).—This Act amends the Gaming and Betting Act of 1906, (*y*) and extends its enactments against what is one of the most prevalent vices in the Colonies.

Betting or wagering on any licensed racecourse or coursing-ground approved by the Minister, on which any sports other than horse-races, pony-races, trotting-races, and coursing are being held, is prohibited.

The number of days in a year on which meetings for trotting-races may be held on any licensed racecourse are limited to twenty where the course is situated within forty miles of Sydney, and to six in other cases.

**Minister for Agriculture.**—No. 6 empowers the Governor to establish a Department of Agriculture and the office of Minister for Agriculture.

**Income tax** (No. 7).—From the year 1908, the deduction of income

(*u*) See *supra*, p. 484.

(*x*) Contributed by Norman Bentwich, Esq.

(*y*) See *supra*, p. 490.



to the amount of £200, which is exempted from income tax, is to be made in the first place from such income as is derived from personal exertion; and when the income of any person, not being a company, derived from personal exertion exceeds £200, such person shall be entitled to a further deduction, but so that the total deduction shall not in any case exceed £1000.

**Repeal of Stamp Duties** (No. 8).—The duties on receipts, bills of exchange, promissory notes and drafts are remitted, and provision is made for refunding the value of uncanceled duty-stamps impressed upon unexecuted forms.

**Companies.**—No. 9 makes several amendments in the Companies Act which was passed in 1906. (z) The list which a company has to make in each year is altered in certain particulars, and provision is made for the Attorney-General, in his discretion, to except any company from making the list. A company must file a balance-sheet, containing a statement of its assets and liabilities, within three months of the general meeting at which a balance-sheet is presented; and every director, manager, and public officer of the company who knowingly and wilfully authorises or permits default in so doing, is made liable to a penalty not exceeding £5 for every day during which such default continues.

**Closer Settlement.**—No. 12 amends the Acts of 1904(a) and 1906 dealing with the same subject. The Governor may constitute three Advisory Boards, consisting each of three members, to report upon land which is suitable for closer settlement, and to estimate the price which should be paid for it. Every purchase or resumption is to be subject to approval by both Houses of Parliament, and the landowner may appeal against the valuation set upon the land to a special Court, and may require the Governor to include in the resumption land contiguous to that required for closer settlement.

**Local Option** (No. 21).—This is another amending Act, and provides an indemnity for certain events which have already taken place; it also makes special provision for estimating the votes given at any local option vote taken before the commencement of the Act.

**Pensions** (No. 22).—Subject to the provisions of the Act, every person permanently incapacitated for any work by reason of accident, or his being an invalid, is entitled to a pension if the following conditions are fulfilled:—

- (a) That he is above the age of sixteen years, and is not in receipt of an old-age pension.
- (b) That he has resided in the State continuously for at least five years preceding the date on which he applies for the pension,

(z) See *supra*, p. 491.

(a) See *supra*, p. 485.

that he has become incapacitated within the State, and is residing in the State on the date on which he establishes his claim.

- (c) That the accident or illness was not self-induced or brought about with a view to obtaining a pension.
- (d) That he has no claim against any employer or company compelled under private contract or public enactment to maintain or compensate him.
- (e) That his income or property does not exceed the limits prescribed in the case of applicants for old-age pensions.
- (f) That he has not directly or indirectly deprived himself of any income in order to qualify for the pension.
- (g) That his relations, *i.e.* father, mother, husband, wife, or children, do not, either individually or by a joint contribution, adequately maintain him (s. 5).

The amount of the pension is not to exceed £26 a year, and is in every case to be determined by the granting authority having regard to any income or property possessed by the applicant, and the fact that his relations contribute to his maintenance, and the fact also of his having received compensation from any source in respect of any injury (s. 6).

When the applicant has made out a *prima facie* case, he is in all cases of invalidity, and in cases of accident where the permanent incapacity for work is not manifest, to be examined by a Government medical officer, who shall certify as to his incapacity. No person to whom a pension certificate has been issued shall receive any payment for the period during which he is an inmate of a charitable institution.

Every instalment of a pension which falls due while the pensioner is out of the State is to be absolutely forfeited, unless leave for such absence has been previously obtained from the Colonial Treasurer.

Payments are to be made by the Colonial Treasurer ; and the Central Board for Old-Age Pensions has the general administration of the Act, its decision on any point being final, subject to the control of the Colonial Treasurer.

**Poor Prisoners' Defence (No. 23).**—Any person committed for trial for an indictable offence, at any time before the jury is sworn, may apply to the committing magistrate, or to a judge of the Supreme Court, or to a chairman of quarter sessions for legal aid for his defence. And if the judge or chairman or magistrate is of opinion, on the facts before him, that such person is without adequate means to provide defence for himself, and that it is desirable, in the interest of justice, that legal aid should be supplied, he is to certify this to the Attorney-General, who may thereupon cause arrangements to be made for the defence of the accused person and payment of the expenses of all material witnesses.



## 2. QUEENSLAND.

1898 (a) Acts passed—27; General, 21; Local and Personal, 3;  
Private, 3.

**Constitution.**—The official edition of the Statutes for 1898 contains (in Appendix II.) the letters patent of 1877, constituting the office of Governor of the Colony, the instructions by Lord Knutsford of 1892 as to the Governor's duties, especially as to exercise of the prerogative of pardon, and the dormant commission of 1898, constituting the chief or senior justice of the Colony Lieutenant-Governor on the death, incapacity, removal, or absence from the Colony of the Governor.

**Elections.**—No 14 (a) makes a number of minor amendments to the Consolidation Act of 1897, and contains a provision as to their incorporation in future prints of the amended Act.

The Act establishes a principal electoral registrar to control the district registrars of electors, and disqualifies certain justices from sitting in revision Courts (s. 4).

**Juries.**—The Jury Act (No. 3) exempts engine-drivers in mines from jury service, and provides for the making by the Governor in Council of regulations as to compensation for loss of time and travelling expenses to be made to jurors attending the Supreme Court or circuit or district Courts.

**Evidence.**—The Evidence Act (No. 15) was passed to facilitate the proof of Acts of Parliament and of judicial and official documents, seals, and signatures of other Australasian Colonies. It is in aid of the common law rules and other statutory provisions (s. 14). All Courts and persons acting judicially in Queensland are to take judicial notice of every Australasian Colony, and the extent of its boundaries, and of its Acts of Parliament, and of the impression of its public seal (ss. 3 [1], 4).

Copies of Acts of any Australasian Colony purporting to be printed by the Government printer of the Colony are to be taken *primâ facie* to be correct copies without further proof, and the date of the Royal assent on the copy is to be accepted as correct (s. 3 [2]). And by s. 12 editions published by the Government printer of a Colony under authority are to be received as *primâ facie* evidence of the Statutes and laws in force in such Colony.

*Primâ facie* evidence of Royal proclamations, orders of the Privy Council, and of rules, orders, and regulations by departments of the

(a) Contributed by W. F. Craies, Esq.

(b) See *infra*, No 1 of 1905, p. 552.

Imperial Government may be given by production of a copy of the *London Gazette* or of the *Queensland Government Gazette*, purporting to contain a reprint of the document in question (s. 5). (c)

S. 6 provides for the proof of similar documents issued by the Governor of public departments of Australasian Colonies, by copies of the *Government Gazette* of the issuing Colony, or of copies purporting to be printed by the Government printer, or of a written copy certified by the clerk of the Executive Council in the case of executive orders, or by a Minister in the case of departmental documents, in either case without proof of handwriting.

By s. 7 documents admissible under the law of an Australasian Colony without proof of the seal, stamp, or signatures authenticating them, or of judicial or official character of the certifying person, are admissible in Queensland on the same terms.

S. 8 permits proof by certified copy over each of the books or other documents of another Colony, if it is of such a nature that if it were a Queensland book it would be admissible in evidence on production from the proper custody.

S. 9 deals with proof of proceedings of Australasian Legislatures.

S. 10 directs the judicial notice in Queensland of the seals and signatures of a number of named officials of Australasian Colonies, and empowers the Governor in Council gazetted by order to add to the list.

S. 11 provides that when by a Statute of another Colony public or corporation documents or certified copies are receivable in evidence, they shall be equally receivable in Queensland if they purport to be sealed or stamped or signed in accordance with the law of the Colony from which they emanate.

S. 13 requires Queensland Courts to accept as *prima facie* evidence of the incorporation of a company in another Colony a certificate of incorporation or registration purporting to be signed by a person whose authority to certify is verified by statutory declaration.

**Copyright.**—The Copyright Registration Act (No. 13) transfers to the Registrar of Patents, Designs, and Trademarks the duties, powers, and authorities given by the Colonial Copyrights Acts to the Registrar-General (ss. 2–4); empowers a deputy to act in his absence (s. 3); and validates certain acts done by him prior to the Act, he having for a time usurped or exercised the functions of the Registrar-General.

**British Probates.**—The British Probates Act (No. 10) provides for the recognition of probates and letters of administration granted in

(c) This section loses sight of the change effected by the Imperial Rules Publication Act of 1893 (56 & 57 Vict. c. 66) in the mode of publishing many of the documents referred to, and does not render the Imperial official edition of the Statutory Rules evidence in the Colony.



other parts of her Majesty's dominions. The scheme of the Act is to extend such recognition, by order of the Governor in Council, to probates, etc., granted (1) in any part of her Majesty's dominions in which recognition is accorded to grants by the Supreme Court of Queensland (s. 3), or (2) by British consular Courts under the Foreign Jurisdiction Acts, subject to similar conditions. The important part of the operative clause (s. 4) is as follows :—

- (1) When a Court of Probate in a part of her Majesty's dominions to which this Act applies has granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to, and a copy thereof deposited with, the Supreme Court, be sealed with the seal of that Court, and thereupon shall be of the like force and effect, and have the same operation in Queensland as if granted by that Court.
- (2) Provided that no probate or letters of administration shall be sealed under this section until there has been filed in the Supreme Court a certificate under the hand of the Commissioners of Stamps to the effect that adequate security has been given for payment of all probate and succession duty in respect of so much (if any) of the estate as is liable to duty in Queensland.
- (3) The Supreme Court may, if it thinks fit, upon the application of any creditor, require, before sealing, that adequate security be given for the payment of debts due from the estate to creditors residing in Queensland, and also, if it thinks fit, upon the application of any beneficiary or next of kin, require that adequate security be given for the protection of the interests of such beneficiary or next of kin.
- (4) For the purposes of this section a duplicate of any probate or letters of administration sealed with the seal of the Court granting the same, or a copy thereof certified as correct by or under the authority of a Court granting the same, shall have the same effect as the original.

By sub-s. 5 the Supreme Court is empowered to make rules as to procedure practice, fees, and costs subject, so far as affects probate or succession duty, to the consent of the Governor in Council.

**Estates of Intestates and Lunatics.**—No. 4 (*d*) provides for the local administration of the property of intestates and lunatics by the establishment of branches of the office of curator and the appointment of local deputy curators of such estates in the northern and central judicial districts of the Colony. Their duties are regulated as to intestates by an Act of 1877, (*e*) and as to insane persons by an Act of 1884. (*f*)

(*d*) See *infra*, p. 539.

(*e*) 41 Vict. No. 24.

(*f*) 48 Vict. No. 8.

**Trustees and Executors.**—No. 8(*f*<sup>1</sup>) amends the Trustees and Executors Act of 1897 by allowing sale or lease by a trustee, with the sanction of the Court, notwithstanding the terms of the trust, to raise money to preserve, improve, or insure the Court property, or to pay debts (s. 2).

In cases where an infant beneficiary has an undivided interest in land, the Court, unless the document creating the interest expresses a contrary intention, may, for the purpose of applying the share for the infant's benefit because of the inadequacy of his income, order the sale of undivided shares in the same land held by other infants (s. 3).

**Mining.**—The Mining Act (No. 24)(*g*) was the most considerable measure of the session. It contains two hundred and fifty-three sections, and repeals sixteen Acts, and consolidates and amends the law of the Colony as to all forms of mining. It is divided into fourteen parts. Part II. deals with gold-fields, and mineral-fields; Part III. with miners' rights and business licences; Part IV. with mining leases; Part V. with mining on reserves; Part VI. with coal-mining; Part VII. with mining for gold or silver on alienated Crown lands within the mining areas. Part VIII. with miners' homestead leases; Part XI. with miners' commons—*i.e.* unleased Crown lands within a mining district, which are allowed to be used for common or stinted pasture for stock by holders of miners' rights, etc., subject to an agistment charge if the stinted number is exceeded. Parts IX., XII., XIII. deal with the administration of the mining laws and the regulation and drainage of mines. The general scheme of the Act resembles that of the other Australasian Colonies.

**Medical Profession.**—The British Pharmacopœia Adopting Act (No. 22) directs that the edition of the British Pharmacopœia published in 1898 under the direction of the General Council of Medical Education shall, as from July 1, 1899, be the pharmacopœia in force in Queensland (s. 1). By s. 2 the Governor in Council may by proclamation bring into force in the Colony any alteration made in the British Pharmacopœia under the direction of the Medical Council.

**Local Government.**—The only Act affecting local government (No. 9) is one dealing with the suspension of repayment of certain local loans.

**Lands.**—No. 7 amends the Pastoral Leases Extension Acts, 1892 to 1897, by relaxing the stringency of such leases, which require fencing within a limited time as a condition precedent to obtaining an extension of the lease.

**Animals.**—The Brands Act (No. 21)(*h*), amends prior Acts as to the registration of brands of horses and cattle, including ear-marks and cheek-brands, and provides for the surrender, cancellation, and re-allotment of brands and marks.

(*f*<sup>1</sup>) See *infra*, pp. 524, 539.

(*g*) See *infra*, p. 518, 523.

(*h*) See *infra*, p. 535.



The Marsupial Proof Fencing Act (No. 16) is intended to facilitate the erection and ensure the maintenance of wire-netting in districts infested with marsupials, and empowers the granting by the State of advances, secured by mortgage or charge, for effecting this object.

The Game and Fishes Acclimatisation Act (No. 17) is intended to encourage the introduction into the Colony of deer, antelope, white swans, pheasants, partridges, grouse(!), and quail, and of salmon, salmon trout, trout, perch, and, strange to say, tench. Reserves may be created, acclimatisation societies encouraged, guardians of game appointed, and the protection of the game provided for by regulations as to open and close times, and licences enforced by a series of penalties closely resembling those of the English game law.

No 23 deals with the licensing and inspection of slaughterhouses, and regulates the slaughter of stock and the sale of meat. It is applicable to any district by order of the Governor in Council. Power is given to establish, maintain, and manage public abattoirs out of money provided by Parliament (s. 7), and to appoint inspectors with very large powers as to entry and inspection of slaughterhouses and butchers' shops, and meat, to see that there is no diseased meat on the premises. The penalties for sale of diseased meat or obstruction of the officers (ss. 22, 23) are very stringent, and the burden of proof that meat found was not exposed for sale or intended for the food of man is placed on the accused (s. 25).

**Weights and Measures** (i).—No. 18 requires owners of mills, refineries, produce stores, markets, or other such places for the treatment, purchase, or sale of field produce (*i.e.* sugar-cane and other crops), to have in or near the mill, etc., suitable weighing instruments subject to inspection and regulation, and on request to weigh all field produce bought or sold, they must give facilities to the seller or buyer to check the weight by himself or a check-weigher.

**1899** (k) Acts passed—16 ; Public, 15 ; Local and Personal and Private, 1.

**Australasian Federation.**—No. 1 provided for a referendum to the electors of the Colony of the draft Federal Constitution of the Commonwealth of Australia, and that the question submitted aye or no should be determined by a majority of the votes actually given. The operation of the Act was also made conditional on a majority in favour of Federation resulting from the referendum in New South Wales (l).

(i) See repealing Act, No. 19 of 1906, *infra*, p. 544.

(k) Contributed by W. F. Craies, Esq.

(l) Regulations were made by the Governor in Council for conducting the referendum, which resulted in a vote in favour of Federation.

**The Criminal Code** (*m*).—*Criminal Law*.—No. 9 is the most considerable Act of the session. It enacts a Code of seven hundred and seven sections, which will come into force on January 1, 1901 (s. 1). This Code is founded on a draft Code prepared by Sir Samuel Griffiths, Chief Justice of the Colony, which was submitted to the Colonial Legislature in the session of 1898, and referred to a commission of lawyers for examination and revision. The result of the labours of the commission has been to effect sundry not very important changes, and some mitigation of the extreme penalties for certain offences. But in the main the Code represents the work of the learned Chief Justice. In framing the Code it was necessary to consider—

- (1) How far the Common and Statute Law of England in 1828 as to crimes was to be read as originally applying to the Colony;
- (2) The effect thereon of the legislation of New South Wales and Queensland;
- (3) How far the existing law could be merely codified, and where it required alteration, to avoid anomalies and ensure simplicity;
- (4) How far the form or substance of the Code should follow precedents contained in the Codes of other countries.

The Criminal Law of Queensland prior to the Code consisted of—

- (1) The Common Law and Statute Law of England as applied to New South Wales in 1828. (*n*)
- (2) Imperial Statutes passed since 1828, and extending to the Colony—
  - (a) Subject to change by local legislation; (*o*)
  - (b) Irrespective of local legislation. (*p*)
- (3) The Statute Law of New South Wales from 1828 to 1859, (*q*) during which period Queensland formed part of the old Colony.
- (4) The Statute Law of Queensland since the separation.

Much of the legislation under heads (2) and (3) consists of transcripts or adaptations of Imperial Acts not applying *proprio vigore* to the Colony.

1. The following subjects have been omitted from the Code as manifestly obsolete or inapplicable to Australia: (*r*) The Statutes of

(*m*) See *infra*, p. 509.

(*n*) By 9 Geo. IV. c. 83, s. 24. See *Att.-Gen. for New South Wales v. Love*, [1893] A. C. 679.

(*o*) *E.g.*, the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60).

(*p*) *E.g.*, the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90).

(*q*) See Art. 20 of the Order in Council of June 6, 1859. Stat. R. and O. Revised 1904, vol. i. tit. "Australia," p. 32.

(*r*) This omission does not, *per se*, determine whether the law in question is applicable to the Colonies; but certain of the Statutes involved, *e.g.* 9 Wm. III. c. 35, are expressly repealed; and s. 5 of the Act seems to exclude from Queensland all offences heretofore only punishable there under the Common Law.



Premunire, Statutes relating to divine worship, the Church of England or the Church of Rome, the law relating to blasphemy,<sup>(s)</sup> and forestalling and regrating.

2. The Code does not deal with the law embodied in Imperial Statutes which are in force in the whole of her Majesty's dominions, irrespective of local legislation.<sup>(t)</sup>

The Act resembles in form the Commonwealth of Australia Act, 1900,<sup>(u)</sup> *i.e.* it consists of a few general provisions, followed by a first schedule containing the Code and a second schedule containing specific repeals of prior legislation of the British, New South Wales, and Queensland Legislatures.

By s. 5 no one may be tried or punished in Queensland as for an indictable offence except under the *express* provisions of the Code or some other Statute Law of Queensland, or under the express provisions of some Statute of the United Kingdom which is expressly applied to Queensland or which is in force in all parts of her Majesty's dominions not expressly excepted from its operation, or which authorises the trial and punishment in Queensland of offenders who, at places not in Queensland, committed offences against the laws of the United Kingdom.<sup>(x)</sup>

By s. 6 acts declared by the Code to be lawful cannot be the subject of a civil action; but with this exception, civil rights of action are unaffected by the Code, and the omission in the Code of penal provisions as to acts or omissions previously actionable wrongs does not affect any right of action in respect thereof. S. 8 preserves the powers of Courts of Record to punish summarily for contempt of court. S. 9 makes the provision, now usual in Queensland, for the incorporation in the Government printers' copies of the Code of amendments made in future years.

The precedents utilised in framing the Code were the draft English Codes of 1879 and 1880,<sup>(y)</sup> the Italian Penal Code of 1888, and the Penal Code of the State of New York. In the main it follows the lines of the English draft Code of 1880, but contains a good deal not to be found there.

For "treason" and "felony" is substituted the term "crime," and for offence punishable on summary conviction the term "simple

<sup>(s)</sup> See Archbold, "Cr. Pleading" (23rd ed.), 1019-1023.

<sup>(t)</sup> The only Imperial Statute since 1828 included in the repeals is the Piracy Act, 1837 (7 Wm. IV. and 1 Vict. c. 88).

<sup>(u)</sup> 63 & 64 Vict. c. 12.

<sup>(x)</sup> *E.g.*, the Pacific Islanders' Protection Acts (35 & 36 Vict. c. 19 and 38 & 39 Vict. c. 51) and the Admiralty Offences (Colonial) Acts (12 & 13 Vict. c. 96 and 23 & 24 Vict. c. 122).

<sup>(y)</sup> Adopted in New Zealand in 1893.

offence," but the term "misdemeanour" is retained for indictable misdemeanours.

Perhaps the most novel or important sections in the Code itself are those (12-14) as to offences partly committed in the Colony procured or counselled by persons out of Queensland, or committed out of the Colony on the procurement of persons in the Colony. The draftsman seems to have succeeded in avoiding the constitutional difficulties created by the limited legislative authority of the Queensland Legislature (z) by making entry of the person concerned into Queensland after the offence a substantive offence under the law of Queensland (see s. 13).

*Malice*.—The perplexing terms "malice" and "maliciously" are deliberately omitted, and the words "wilfully" or "advisedly" (a) are substituted. To make up for these omissions, "criminal intention and motive" are thus defined in s. 23 :—

Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will or for an event which occurs by accident.

Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or in part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

Unless otherwise expressly declared, the motive by which a person is induced to do or omit an act, or to form an intention, is immaterial so far as regards criminal responsibility.

This definition appears in substance to embody the common law as to *mens rea*, apart from the rules as to ignorance of law or mistake of fact. As to the latter, the general rule is thus stated (s. 24) :—

A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist. (b) The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

S. 25, while perhaps an innovation, seems to turn into law what has certainly been a guide to juries in practice—

(z) See *McLeod v. Att.-Gen. for N.S.W.*, [1891] A. C. 455; and *re the Bigamy Laws of Canada* (1897), 27 Canada S. C. 461.

(a) See 37 Geo. III. c. 70.

(b) Cf. with this the Canadian decision in *Reg. v. Machekequonabe* (1897), 23 Ontario 309, approving the conviction for manslaughter of a pagan Indian who shot a man under the honest belief, shared by his tribe, that the deceased was an evil spirit with cannibal propensities.



Subject to the express provisions of this Code relating to acts done upon compulsion or provocation or in self-defence, a person is not criminally responsible for an act or omission done or made under such circumstances of extraordinary emergency that an ordinary person possessing ordinary power of self-control could not reasonably be expected to act otherwise (c) (see *Reg. v. Dudley* (1884), 14 Q.B.D. 273).

The definition of insanity (s. 27) adds to elements deduced from *M'Naughton's* case (c<sup>1</sup>) that suggested by Sir James Stephen, (d) but not fully accepted in England: (e) "that of incapacity to control actions."

S. 53 provides for the punishment of persons defaming foreign sovereigns in the Colony, and sets at rest the doubts which have been felt as to the correctness of such a decision as *Reg. v. Peltier*, 1803. (f)

Chapter viii. deals with the offences of interference with the Executive or Legislature, which in England have been dealt with as breach of privilege, and chapter ix. s. 78, contains a provision which in form is new to English law, and seems to come from the Italian Code:—

Any person who by violence or by threats or intimidation of any kind hinders or interferes with the free exercise of any *political* right by another person is guilty of a misdemeanour. (g)

*Perjury.*—Perjury, an offence which in various forms is to be found in about two hundred English Acts, is adequately defined and dealt with in three sections (123–125).

*Compounding Felonies.*—For the offence of compounding a felony is substituted the offence of compounding a crime, which is wider, because a number of offences—*e.g.* perjury—which are misdemeanours in England are made crimes in Queensland. But it is not made an offence to compound offences which are misdemeanours by the law of Queensland. (h)

*Offences against Person.*—In part v., dealing with offences against the person, a considerable change is made in the form of the law. S. 245 defines assault and battery as one offence under the name "assault," consisting in "applying force to another" under circumstances specified. The term "applies force" is made to include the application of heat, light, electrical force, gas, odour, or any other substance or thing whatever in such a degree as to cause injury or personal

(c) Query, whether this would excuse cannibalism by shipwrecked sailors?

(c<sup>1</sup>) (1843) 10 Ch. and F. 200.

(d) 2 "Hist. Crim. Law," 186.

(e) See Archbold, "Cr. Pleading" (23rd ed.), pp. 23–30.

(f) 28 State Trials 529.

(g) See *Ashby v. White*, 1 Sm. L. C. 240. The Trade Union Acts are not specifically directed against interference with "political" rights.

(h) See hereon Archbold, "Cr. Pleading" (23rd ed.), pp. 1088–1093.

discomfort. (i) Ss. 268 and 269 contain a definition of what constitutes provocation of an assault, substantially the same as the Common Law defence of provocation to manslaughter.

*Homicide*.—Chapter xxviii. ("Homicide") diverges considerably from the English law. Unlawful homicide is divided into three categories: (i.) wilful murder; (ii.) murder; and (iii.) manslaughter.

Manslaughter is unlawful killing under such circumstances as not to constitute wilful murder or murder (ss. 303 and 304). Wilful murder is unlawfully killing any person, with intention to cause his death, or that of another person, except in the cases stated in Art. 301. Murder is defined (s. 302) as unlawfully killing—

under any of the following circumstances, that is to say:—

- (1) If the offender intends to do to the person killed or to some other person some grievous bodily harm;
- (2) If death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;
- (3) If the offender intends to do grievous bodily harm to some person for the purpose of facilitating the commission of a crime which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such crime;
- (4) If death is caused by administering any stupefying or overpowering thing for either of the purposes last aforesaid;
- (5) If death is caused by wilfully stopping the breath of any person for either of such purposes.

In the first case it is immaterial that the offender did not intend to hurt the particular person who is killed; in the second case it is immaterial that the offender did not intend to hurt any person; in the three last cases it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

Both wilful murder and murder are made punishable by death.

*Defamation*.—Chapter xxxv. on defamation makes slander indictable, and retains a form of *scandalum magnatum* by providing a special punishment for the defamation of members of Parliament as such by persons not in Parliament (s. 381).

*Larceny*.—In chapter xxxvi. ("Larceny") the use of definitions of what can be stolen and of stealing has rendered it possible to make the chapter much shorter than the English Larceny Act, 1861, (k) and by a similar method the draftsman has much abbreviated the law as to forgery and malicious damage.

*Preparation to Commit Offences*.—In chapter lv. attempts are made punishable with half the penalty attached to the complete offence

(i) Cf. draft Code 1880, s. 196.

(k) 24 & 25 Vict. c. 96.



except where that is death or penal servitude for fourteen years or over, in which cases seven years' imprisonment is the maximum for the attempt.

*Conspiracy.*—Chapter lvi. distinguishes, for purposes of punishment, conspiracy to commit crime ("felony") from conspiracy to commit offences of minor gravity; but s. 543 appears to accept in the fullest sense the present English law, by treating as criminal every conspiracy to effect any unlawful purpose, or to effect any lawful purpose by unlawful means.

*Procedure.*—Part viii., which deals with procedure, is in the main on the lines of English law, except that indictments are not submitted to a grand jury, but presented to the Court by a Crown Law Officer, and that the person indicted is entitled to a copy of the indictment.

In chapter lxiii. (s. 632) the uncorroborated testimony of an accomplice is made insufficient in law (*l*) for conviction, and in chapter lxvii. a person convicted is entitled, as of right, to have a case reserved on points of law taken on his behalf.

*Fisheries.*—No. 3, (*m*) amends the prior Acts relating to pearl shell and *bêche de mer* fisheries. (*n*) S. 2 provides for the qualification of owners, licensees, and lessees of ships and boats used in the fishery. The licence is not to be issued unless the licensing authority is satisfied by declaration under the Act. By s. 3 a penalty is provided for punishment of false declarations. (*o*) The Governor in Council is empowered to make regulations for the registration of owners, etc., of vessels engaged in the fishery and of agreements relating to such vessels, and for the due and effectual execution of the Act (ss. 5 and 6). Sect. 4 saves the rights of persons legally licensed in 1898. The persons who can hold licences are—

- (1) Natural-born British subjects;
- (2) Persons naturalised under the Imperial Statute, or a Colonial Statute or ordinance;
- (3) Persons made denizens of Queensland by letters of denization;
- (4) Bodies corporate consisting wholly of qualified persons established under and subject to the laws of some part of her Majesty's dominions.

*Legitimation.*—No. 12 abolishes as to the Colony the Common Law rule against legitimation *per subsequens matrimonium* and assimilates

(*l*) As to the English rule, see Archbold, "Criminal Pleading" (23rd ed.), pp. 390-391.

(*m*) Reserved for signification of her Majesty's pleasure, which was given on August 25, 1899.

(*n*) See 57 & 58 Vict. c. 60, ss. 1, 9, 71.

(*o*) Cf. 57 & 58 Vict. c. 60, ss. 67, 680.

the Colonial law to that of Scotland, of most European States, and of many of the United States of North America. (*p*).

A man who claims to be the father of any illegitimate child whose mother he has married since the child's birth may make a statutory declaration in the form provided by the Act, and on its production the registrar must register the child, whether dead or alive, as the lawful issue of the marriage, and if it is already registered as illegitimate, must also make a note on the previous entry of the new entry of legitimation (s. 7).

The effect of the registration is to give the child to which it relates, whether born before or after December 23, 1899, the status of a legitimate child from its birth, whether its parents married before or after the date above given, and to entitle the child so legitimated to all the rights of a child born in wedlock. The legitimation, as already stated, may take place after the child is dead, and in such event its issue acquire the same rights to represent their parent as if the parent had been born in wedlock. The legitimation does not affect rights accruing to others under dispositions made before, or by devolution of law from, persons dying before the passing of the Act (s. 5); and a child is not legitimated if at the time of its birth there existed a legal impediment to the marriage of the parents. (*q*)

The Act does not state expressly that the child must be born or the subsequent marriage take place or the parents be domiciled in Queensland; (*r*) but it is to be presumed that there was no intention to deal with cases where the parents or marriage were not *bonâ fide* domiciled in Queensland. If this be not so, difficulties and conflicts of law of a serious kind may arise.

**Registration of Deeds.**—No. 6 (after giving short titles to certain Acts of New South Wales, 7 Vict. No. 16, and 20 Vict. No. 27, which form part of the original law of Queensland) provides by s. 2 that—

no instrument which at the date of the passing of this Act [November 3, 1899] requires or may hereafter require to be registered under the provisions of the Mercantile Act of 1867, the Bill of Sale Act of 1891, the Land Act of 1897, or the Mining Act of 1898, or any Act amending or in substitution of them shall require to be registered or shall be registered under the Registration of Deeds Act, and no such instrument executed before the passing of this Act, and no instrument of any kind whatsoever enacted before the passing of this Act, under the provisions of any Act now repealed relating

(*p*) Dicey, "Conflict of Laws" (2nd ed.), 479; also Burge's "Colonial Laws," vol. ii. pp. 347-372.

(*q*) I.e. an adulterine bastard cannot be legitimated. The law of Malta is different on this point (see *Gera v. Ciantar* (1887), 12 A. C. 557).

(*r*) See *Re Goodman's Trusts* (1881), 17 Ch. D. 266; *Andros v. Andros* (1883), 24 Ch. D. 637; Dicey, "Conflict of Laws" (2nd ed.), pp. 486, 493.



to Crown lands or to goldfields, mines, or minerals respectively, shall be deemed to be invalid or shall be in any way prejudicially affected merely by reason that it has not been registered under the provisions of the Registration of Deeds Acts.

**Supreme Court.**—No. 5 empowers the Registrar of the Central and Northern Courts to take certain business ordinarily reserved to the judge in cases where the judge is by reason of absence, illness, or other cause unable to take the business and no other judge is available.

The business in question is—

- (1) Unopposed or *ex parte* proceedings in insolvency;
- (2) Applications for *capias ad respondendum*;
- (3) Applications under s. 17 of the Bills of Sale Act, 1891, (s) for rectification of mistakes, etc., in the contents or filing of documents within that Act.

The Supreme Court may make regulations as to appeals from the registrars (s. 3).

#### 1900 (t) Acts passed—Public and General, 34. (u)

**Commonwealth of Australia.**—No. 25 (x) provides for the election of the six senators and nine representatives to which Queensland is entitled by the Australian Commonwealth Act, 1900. (y) The State forms a single electorate for the election of senators, (z) and is divided into nine divisions, each returning one M.P. The electors are those competent to vote at elections for the State Legislature. The rule of one man one vote is applied.

**Customs.**—No. 26 empowers the Governor in Council by proclamation, at any time within three months before the imposition by the Commonwealth of uniform duties of customs, to reduce the customs duties on unmanufactured tobacco and the excise duties on tobacco, spirits, and beer manufactured in Queensland to an amount not below the minimum customs or excise paid on articles of the same description in any other State of the Commonwealth. The Act contains a clause giving purchasers under current contracts the benefit of the reduction.

(s) 55 Vict. No. 23.

(t) Contributed by W. F. Craies, Esq.

(u) Including seven which would in the United Kingdom be classed as local or personal.

(x) This Act was confirmed by the Imperial Act 1 Edw. VII. c. 29, *supra*, p. 77, as its validity had been rendered doubtful by omission to reserve it for her late Majesty's consideration.

(y) 63 & 64 Vict. c. 12. See *supra*, p. 49.

(z) It will thus be seen that Queensland has not availed itself of the right reserved to it by chap. ii. Art 7, of the Commonwealth Act to divide the State into divisions for the election of senators.

**Judicature.**—No. 2 alters the boundaries of the central and northern districts of the State, for purposes of judicature and registration of title to land, and makes the necessary consequential provisions for registers of land in the area affected by the change.

No. 6 abolishes the payment of judicature fees and percentages by stamps, and makes them payable in sterling or Treasury notes, (a) and also increases the authority of the judges as to making rules of Court.

**Criminal Law.**—Some errors detected in the Criminal Code Act of 1899 (b) are corrected by No. 7. The form of the corrective Act is somewhat novel, the operative clause (s. 1) running thus:—

*“The Criminal Code Act, 1899, shall be and is hereby amended by making therein the corrections set forth in the schedule to this Act.”*

*The Schedule.*

Schedule I.

S. 51.—*Amend the section to read as follows: . . .*

S. 317.—*Amend the definition of the offence to read as follows: . . .*

**Exportation of Arms, etc.**—No. 8 is an adaptation to Queensland of the Imperial Exportation of Arms Act, 1900. (c)

**Education.**—No. 11 amends the State Education Acts, 1875 and 1897. The amendments relate to compulsory attendance at school, and provide for attendance at provisional schools and define the school half-year (during which sixty days' attendance must be given by children between six and twelve) as including all schooldays between the first schoolday in January and the last schoolday in June, or between the first schoolday in July and the last schoolday in December. In cases of prosecution for non-attendance, a certificate by the head teacher is made *prima facie* evidence of the attendances of the child.

Grammar schools for secondary education have been established in Queensland under an Act of 1860, with provision for supplementing voluntary donations by State grants for buildings and annual sub-ventures. No. 30 provides for the appointment and salaries of inspectors of these schools, who are to be graduates of a British or Australian university. They are subject to the directions of the Minister of Public Instruction, and are to inspect and report on the grammar schools.

(a) This change is possibly in consequence of the transfer of the Post Office to the Commonwealth. The same stamps were used in the Colony for postal and revenue purposes.

(b) See *supra*, pp. 501-506.

(c) 63 & 64 Vict. c. 44.



**Defence.**—No. 29 amends the Colonial Defence Acts, 1884–1896, in certain details, of which the most important are the power given to sanction the formation of battalions of cadets for instruction in military drill and training of boys between twelve and eighteen, and the new definitions given to the terms “corps” and the “active land force” of the State.

**Pacific Cable.**—No. 15 authorises the Government to join in the cost of the “all-British” Pacific cable, if that does not exceed £2,200,000, and limits the share of Queensland to one-ninth of such cost. The necessary authority is given to co-operate in raising the necessary capital and taking the necessary steps for constructing and maintaining the cable. (*d*)

**Census.**—No. 27 altered the date of the quinquennial census to March 31, 1901, to correspond with the date in the United Kingdom.

**Agriculture and Pastoral.**—Three Acts—Nos. 3, 14, and 20—deal with pastoral leases. No. 3 amends the Act of 1869 as to the sale by auction of the residues of forfeited or vacated leases.

No. 14 authorises the grant of new pastoral leases in certain parts of the unsettled districts of Queensland. It empowers pastoral tenants—*i.e.* leaseholders under the Acts of 1869 and 1890—and holders of occupation licences to surrender their old leases or licences, and obtain new leases for twenty-one years on certain statutory conditions, including a right by the Crown to resume not more than one-third of the holding without compensation except for improvements.

No. 20 deals with the liabilities of pastoral tenants and selectors (small farmers) as to rabbit-proof fencing and the settlement of disputes on this subject.

**Sugar Cane.**—No. 17 provides for the establishment and control of stations properly equipped for conducting experiments with regard to sugar cane and sugar and the by-products thereof, and for preventing the spread of disease in cane, and generally for promoting the well-being of the sugar industry. The stations are to be put under a Director of Sugar Works, who is to make inquiries, researches, and investigations as directed by the Government and to report annually. The cost of this experiment is to be defrayed out of a sugar fund, to be created by an assessment not exceeding one penny per ton on every ton of cane received at any sugar works in Queensland, payable by the owner of the works, but ultimately divisible equally between him and the cane-grower.

**Harbours.**—No. 31 amends the Harbour Boards Act, 1892, particularly by empowering the Crown to let or sell to harbour boards foreshores or lands adjacent to the sea or navigable rivers, and also Crown

(*d*) Cf. the Imperial Pacific Cable Act, 1901 (1 Edw. VII. c. 31), *supra*, pp. 90, 91.

land under the sea; and also empowers the Crown to give to harbour boards licences to reclaim land below high-water mark and adjacent to land vested in such boards. Land so reclaimed is granted or reserved to the board for the purposes of their powers and duties under the Harbour Boards Acts.

**Factories.**—No. 28 (an Act of sixty-nine sections) amends the law relating to factories and shops, and repeals the Act of 1896. The Act is in nine parts.

Part I. (preliminary) deals with the definitions (s. 4), the constitution of districts to which the Act may be applied by Order in Council (s. 5), and with the appointment and salaries of factory inspectors (s. 6).

Part II. deals with the registration of factories and boilers, and inspection by the factory inspectors. The term “factory” includes (*inter alia*)—

- (i.) Any building, premises, or place in or in connection with which *two* or more persons, including the occupier, are engaged in working directly or indirectly at any handicraft, or in preparing, working at, dealing with or manufacturing articles for or in connection with any trade or for sale, including every bakehouse (*e*) or laundry;
- (ii.) Any building, premises, or place in which a person or persons of the Chinese or other Asiatic race is or are so engaged; and
- (iii.) Places where steam or other mechanical appliances are used in preparing, working at, dealing with, or manufacturing goods, or in packing them for transit.

Part III. deals with the entry and inspection of factories and the inspection of boilers, and with inquiries in the case of boiler explosions. As to the latter it embodies the chief provisions of the Boiler Explosions Act, 1882 (*f*), but the definition of “boiler” is fuller and more elaborate, including gas cylinders and aerated water factories; and there are elaborate provisions for inspecting and certifying boilers.

Part IV. provides for the keeping and inspection of records of employees and wages, and with posting notices with respect to the hours and terms of employment. (*g*)

Part V. regulates the sanitary arrangements of factories and shops. It corresponds closely to ss. 1–9 of the Imperial Factory and Workshop Act, 1901. (*h*)

(*e*) “Bakehouse” includes all places where bread or pastry is prepared for sale, and the kitchens of restaurants or cookshops, irrespective of the number of persons employed, even when they are working at home and are members of the same family.

(*f*) See s. 11 of the English Factory and Workshop Act, 1901 (1 Edw. VII. c. 22). See *supra*, pp. 80–85.

(*g*) Cf. 1 Edw. VII. c. 22, ss. 127–131.

(*h*) 1 Edw. VII. c. 22. See *supra*, pp. 80–85.



Part VI. deals with the fencing of machinery and with protection against fire. It is framed on the lines of the Imperial Acts of 1878 *(i)* and 1895, *(k)* but makes special provisions as to the fencing of hoists and lifts.

Part VII. regulates the age for employment. *(l)* It absolutely forbids the employment of children under thirteen. Employment of children between thirteen and fourteen is lawful only by special written permission of the responsible Minister of State. The employment of females and of lads between fourteen and sixteen is limited to forty-eight hours a week; and subject to certain powers of exemption, females under eighteen and males between fourteen and sixteen may not be employed between 6 p.m. and 6 a.m. S. 45 creates a minimum wage of two shillings and sixpence a week for persons under twenty-one, and forbids the taking of premiums or other consideration for engaging or employing lads between fourteen and sixteen or females under twenty-one in the making of wearing apparel, boots or shoes.

Part VIII. regulates the hours of business in shops on weekdays. *(m)* Hours are prescribed for the closing of shops (other than certain exempted classes) on each weekday. The hour is 6 p.m., except on Friday (10 p.m.) and Saturday (1 p.m.). Provision is made for fixing a weekly half-holiday. If it is a day other than Saturday, shops may remain open till nine, but must close at six on the preceding Friday, unless that is chosen for the half-holiday. The maximum period of employment for females and persons under sixteen is fixed at fifty-two hours in shops subject to the Act, and sixty hours in exempted shops. Employees in the latter class, or in hotel bars or registered clubs, and carters for shops or factories, are given a right to a weekly half-holiday (ss. 55, 56).

Part IX. (miscellaneous) forbids contracting out of any liability imposed on occupiers of factories or owners of boilers by the Act, or regulations made under it. S. 60 gives the Governor in Council very large powers to make regulations under the Act.

**Public Health.**—Two Acts deal with the public health. No. 9, an Act of one hundred and eighty sections, consolidates with amendments eight Statutes relating to public health. It is divided into nine parts.

Part I. (preliminary) provides (s. 4) for the application of the whole or parts of the Act to any district in the State, and abolishes the existing Central Board of Health.

*(i)* 41 & 42 Vict. c. 16.

*(k)* 58 & 59 Vict. c. 37. Cf. 1 Edw. VII. c. 22, ss. 10–17.

*(l)* Cf. 1 Edw. VII. c. 22, Part II. ss. 23–57.

*(m)* The Lord's Day Acts seem to apply to Queensland.

Part II. deals with the administration of the Act. Subject to the control of the Governor in Council and the Minister charged with the administration of the Act, the central authority for working the Act is a Commissioner of Public Health, who must be a medical practitioner and expert in sanitary science, and is to preside over an advisory Central Board of Health (s. 10). This Board may consist of five members besides the Commissioner appointed by the Governor in Council, of whom at least two must be medical men, and at least one a person who has had experience of local government as a member of a local authority (s. 11). The local authorities must report annually to the Commissioner, who can constitute on his own motion, or under the direction of the Governor, inquiries as to matters relating to public health, or in cases where his sanction is required under the Act. He is also empowered to make regulations under the Act subject to approval by the Governor in Council and to submission of the regulations to Parliament, which regulations must be enforced by the local authority, or, in their default, by the Commissioner, who is also empowered to act in emergencies, of which he is the judge—

- (a) In respect of powers and duties of local authorities;
- (b) As to abatement and prevention of nuisances, and preservation of water from pollution; and
- (c) As to places subjected or likely to be subjected to visitation by endemic, epidemic, or infectious disease.

Appeals also lie to him from decisions of local authorities with respect to expenses (s. 21). Every order of the Commissioner or confirmation by the Minister is conclusive, unless the Governor in Council, on memorial by an aggrieved local authority, on inquiry make other order as to the matters in controversy (s. 22).

Provision is also made for the appointment by the Governor in Council of medical inspectors, health officers, public vaccinators, analysts, experts, engineering inspectors, and such other officers as are thought necessary. These officers act on behalf of the State and report to the Commissioner, and on authority by him may attend all meetings of the local authority.

Local authorities may, and may be ordered to, appoint medical officers of health and such other officers as are necessary for the due execution of the Act and regulations, and in certain cases may employ for local purposes the State analysts and experts.

Part III. deals with sewers and drains and the removal of refuse and filth. It follows in the main the lines of the English Public Health Act, 1875. (n)

Part IV. deals with the sanitation of dwellings, providing for the

(n) 33 & 39 Vict. c. 53.



closing of houses unfit for occupation, the suppression of cellar dwellings, and the supervision of lodging-houses.

Part V. deals with nuisances and offensive trades on the lines of the English Act of 1875. (*n*)

Part VI. is a fasciculus of provisions adapted from the provisions of the Act of 1875 (*n*) as to unsound food, and the English Acts as to the sale of food and drugs and bread.

Part VII. deals with infectious diseases, including bubonic plague. It provides for the establishment of hospitals, the notification of disease and the disinfection of infected premises and clothes, and for compulsory vaccination, subject to a privilege in favour of the conscientious objector.

Part VIII. deals with infant life protection. It is on the lines of the Imperial Act of 1872, (*o*) and does not adopt the policy of the unsatisfactory Act of 1897. (*p*)

Part IX. (miscellaneous) deals in the main with legal proceedings to enforce the Act, but contains a clause (167) requiring the Government to prepare model bylaws for the purposes for which bylaws can be made under the Act, and to supply them to the local authorities, who may adopt them in whole or in part or make their own bylaws under the Act.

No. 10 amends an Act of 1890 as to contracts with a local authority as to the removal of domestic refuse.

**Ecclesiastical Affairs.**—Two relate to ecclesiastical bodies. One (No. 33) is an estate Act allowing the Anglican Synod of the diocese of Brisbane to dispose of an estate known as Bishopsbourne and to apply the proceeds for the benefit of the bishop of the diocese. The other (No. 34) is to enable certain arrangements entered into between the Presbyterian Churches of the constituent States of the Commonwealth to be carried out, with a view to form one federated Presbyterian Church for Australia. The main aim of the Act is, of course, to validate the consequent dealings with Church property situate in Queensland. The schedule to the Act contains the scheme of union, including a summary of the articles of religion of the proposed federated Church. (*q*)

1901 (*r*)

Acts passed—Public, 27.

**General Observations.**—Owing to the creation of the Commonwealth of Australia the legislation of the constituent States falls within narrower limits than that of the separate Colonies.

(*o*) 35 & 36 Vict. c. 38.

(*p*) 60 & 61 Vict. c. 57.

(*q*) The whole Act is a curious illustration of the difficulties experienced by ecclesiastical bodies in avoiding occasional resort to the civil magistrate.

(*r*) Contributed by W. F. Craies, Esq.

The most interesting experiment in Queensland is the creation of a Land Bank (No. 24).

A large proportion of the Acts relate to agricultural and pastoral matters.

**Supreme Court.**—No. 2 reduces the salary of the chief justice in the case of future appointments to £2500. (*s*)

**Civil Service.**—No. 17 abolishes the Salaried Public Service Board created by the Public Service Act of 1896, and vests its powers, duties, and authority in the Executive Council of the State.

**Customs and Excise.**—No. 13 empowers the Governor by Order in Council to appoint officers or classes of officers to perform or exercise certain duties, obligations, rights or powers imposed or conferred on officers of customs or excise, but outside their ordinary functions. The Act is rendered necessary by the transfer to the Commonwealth of the control of customs and excise.

**Colonial Stock.**—No. 5 authorises the State Treasurer to issue his warrant for payment out of the Consolidated Revenue Fund of the amount of any judgment, decree, rule, or order, under which the registrar of Queensland Stock (*t*) is declared liable under the Imperial Colonial Stock Act, 1877, (*u*) in any legal proceedings in the United Kingdom in relation to the register of Queensland Inscribed Stock, or any entry in or omission from that register, or any right or title to an interest in any such stock, or any dividend thereon. (*x*)

**Finance : Stamps.**—No. 3 (*x*<sup>1</sup>) imposes until September 30, 1903, a graduated scale of stamp duty on receipts for the payment of money : 1*d.* on receipts of £1 and upwards and less than £2 ; 2*d.* on receipts of £2 and less than £50 ; 3*d.* on receipts for £50 and upwards and under £100 ; and 6*d.* on receipts of £100 and upwards, for every £100 or fraction of £100. A penalty is imposed for splitting up the amounts to evade duty.

**Treasury Bills.**—No. 4 authorises the raising in aid of the revenue of a sum not exceeding £530,000 by Treasury Bills secured on the consolidated Revenue Fund, bearing interest at 4 per cent., and made payable not later than January 1, 1912.

No. 7 provides for special sales of Crown land, the proceeds whereof are after June 30, 1903, to be carried to a special Treasury Bills Account and applied in keeping down the interest and discharging the

(*s*) Under an Act of 1892 (56 Vict. No. 32) the chief justice received a salary of £3500.

(*t*) Appointed under the Queensland Stock Inscription Act, 1883, 47 Vict. No. 1.

(*u*) 40 & 41 Vict. c. 59.

(*x*) This Act was probably passed in consequence of some difficulty arising with respect to litigation in England.

(*x*<sup>1</sup>) Repealed by No. 2 of 1903, *infra*, p. 525.



principal of the bills issued under Act No. 4, and in discharging the obligations in respect of which the bills were authorised to be issued.

**Land Bank.**—No. 24 (*y*) authorises the establishment of a land bank for the purpose of promoting the occupation, cultivation, and improvement of agricultural lands—*i.e.* (1) lands held in fee simple and used or about to be used for agricultural or dairying purposes; (2) lands held under the Crown Lands Acts as agricultural farms, agricultural homesteads, grazing farms, grazing homesteads, or unconditional selections; (3) mining homestead leases; (4) lands by order of the Governor in Council declared to be agricultural for the purposes of the Act. The bank is to be established and controlled by the Governor in Council, with trustees, deputy banker, and manager. Its funds are to be derived (i.) from a debenture issue secured on the consolidated revenue of the State not exceeding £250,000 bearing interest not exceeding 4 per cent., and redeemable not earlier than January 1, 1926, nor later than January 1, 1931; (ii.) such moneys as may be appropriated by Parliament.

The bank from its funds may make advances to owners or occupiers of agricultural lands for making the prescribed improvements, not exceeding £800, nor thirteen-twentieths of the fair estimated value of the improvements when made. The advances are to be obtained by mortgage with absolute priority over all other claims, and may not be made on land subject to any mortgages or charges not subject to the Act.

The details as to the mode of securing advances, as to prescribing and valuing improvements, and the forms of security, are left to be settled by Regulations in Council (s. 26).

**Life Assurance.**—No. 20 is an Act of fifty sections for regulating and controlling life assurance. To a large extent it is a transcript of the main provisions of the British Life Assurance Companies Acts.<sup>(z)</sup> But it also contains a number of additional clauses for the protection of the assured. A company having its head office outside Queensland may not carry on business there until registered. Policies effected without complying with this enactment are binding on the company; but it cannot recover any premiums. Policies on the Queensland register of a company are made subject to the laws of the State. Life policies on own life are exempted from execution, and from the insolvency laws; and assignment of policies must be in a statutory form, and to be valid must be registered. Mortgages and trusts of policies are not to be noticed by the company, and are effected by a separate instrument (a defeasance or declaration of trust).

Minors of sixteen or over are allowed to effect life policies on their

(*y*) See *infra*, pp. 531, 534.

(*z*) 33 & 34 Vict. c. 61; 35 & 36 Vict. c. 41; 59 Vict. c. 8.

own lives. Policies may not be forfeited for mere understatement of age; and provision is made for adjusting the premiums and the sum payable where the age has been overstated or understated. And policies may not be forfeited for non-payment of premiums unless the arrears equal or exceed the surrender value. The Act also contains a provision similar to that of the Imperial Act of 1896, (a) restricting the forfeiture of industrial policies; but fixes the limit for such policies at £100, and not £20 as in the United Kingdom.

**Pastoral Leases.**—No. 20 deals with the grant of new leases of Crown lands formerly comprised in pastoral leases. The scheme is to classify the lands on or before the expiry of the lease, and to re-let pastoral lease lands not wanted by “selectors” nor likely to be required for settlement or township reserves.

**Agricultural Homesteads.**—No. 12 (b) permits the proclamation of unoccupied country lands as open for selection as agricultural homesteads, by members of the body of settlers specified in the proclamation, and the setting apart of sites for agricultural townships. The settlers may acquire the freehold of the homestead and town lot on showing that ten shillings an acre has been expended on substantial and permanent improvements.

**Agricultural Lands' Purchase.**—No. 9 (c) amends prior Acts of 1894 (d) to 1897 (e) as to terms on which purchase of land for agricultural settlement may be effected, and includes settlement for dairying purposes within the scope of the Acts.

No. 23 (f) provides for the purchase by the Crown of a large quantity of specified land with a view to re-sale to agricultural settlers under the Acts last referred to,

**Marsupials.**—No. 18 (g) continues and amends the Marsupial Boards Act of 1897, extending it to dingoes (wild dogs) and inserting a new definition of the marsupial “scalp” to be produced as evidence of destruction.

**Prickly Pear.**—No. 11 is intended to facilitate the eradication of prickly pear from Crown lands. The scheme of the Act is to grant leases for seven years, at a peppercorn rent, of lands infested with prickly pear. The lessee receives a bonus on condition that he rids the land of prickly pear, and at the end of the lease, if its terms have been complied with, may obtain a freehold grant of the land.

**Cruelty to Animals.**—No. 26 repeals the New South Wales Act, (h) formerly in force in the State, and makes new provisions

(a) 59 & 60 Vict. c. 26.

(c) See *infra*, p. 535.

(e) 61 Vict. No. 13.

(g) See *supra*, p. 500.

(b) See *infra*, p. 530.

(d) 58 Vict. No. 27.

(f) See *supra*.

(h) 14 Vict. No. 40.



for the protection of animals, which do not differ materially in substance from those in the United Kingdom, (i) but extend to all animals whether in a natural or domestic state, with certain specified exceptions as to vermin, and as to the taking or capture of wild animals. But persons in public places are permitted to kill dogs which in any manner cause danger or injury, or attack passengers whether travelling on foot, or on a carriage or cycle.

**Local Government (No. 27).**—Interest at the rate of 5 per cent. is made payable on all rates unpaid for not less than two clear months on or after January 1, 1902. Mortgagees are empowered to add to their securities, rates, and interest on unpaid rates, paid by them. Provision is made for the sale of land the rates whereon have remained unpaid for seven years or longer.

Power is given to extend the time for repayments of loans made by the Crown to municipalities under the Local Water Loan Acts, 1880–1899, and to suspend the payment of arrears.

A clause is inserted legalising expenditure by local bodies in connection with the inauguration of the Commonwealth, and the Royal visit to Australia. Authority is given to municipalities to form roads in a special manner on “uneven, broken or sidelong” ground, and to deal with noxious weeds and plants.

**Mines.**—No. 10 amends the Mining Act of 1898 (k) by a series of additions and alterations which are to be printed as part of the principal Act in all future copies. The chief changes are the inclusion of a definition of mining drives, and of a clause as to leases for mining tramways, and the rights of mining under lands traversed by such tramways. Moreover, mineral leases hereafter granted must contain a covenant to employ at least one man for every ten acres or fraction of ten acres leased, unless a total or partial exemption is allowed.

## 1902 (l)            Acts passed—Public, 28; Private, 1.

**Introductory Observations.**—The bulk of the legislation of 1902 seems to have been concerned with making financial ends meet during a period of drought and consequent distress and shrinkage of revenue.

The Statutes of most general importance are those consolidating the law as to local government, providing for the registration of firms, and establishing a tax on incomes.

In the drafting of Queensland Statutes there is a growing tendency to treat former Statutes dealing with important subjects as chapters in

(i) 12 & 13 Vict. c. 92; 17 & 18 Vict. c. 60; 63 & 64 Vict. c. 33. See *supra*, pp. 46–47.

(k) See *supra*, p. 499.

(l) Contributed by W. F. Craies, Esq.

the State Code, and to draft the Amending Acts from this point of view. The Land Act (No. 18) of the year contains the following clause (s. 2):—

In all copies of the principal Act hereafter printed by the Government printer, all repeals and amendments of the provisions of the principal Act made by this Act *or by any other Act heretofore passed or hereafter to be passed*, shall be omitted and inserted, as the case may be, and reference shall be made in the margin of the principal Act to the sections of the Acts by which such repeals and amendments are respectively made.

This provision enables the official draughtsman and the Government printer to edit up the Statutes in a manner which in less favoured parts of the Empire is left to the private enterprise of text-writers.

**Treasury Bills and Loans.**—No. 20 provides for the cancellation of £1,250,000 Treasury bills issued under Acts of 1893 and 1895 but not disposed of, and for the issue in substitution of other Treasury bills to the same amount payable on such days not later than July 1, 1913, as may be appointed by the Governor in Council (s. 2). It also extends (s. 3) to the same limit of time the currency of £250,000 Treasury bills authorised but not issued under the Act of 1895, and authorises (s. 4) a further issue of £500,000 with the same limit of currency.

No. 26 authorises the raising by Treasury bills of a further £600,000.

No. 27 authorises the raising of a loan of £2,256,000 for the public service of the State by debentures or inscribed stock, (*m*) bearing interest at a rate not exceeding 3½ per cent.

**Civil Service: Pay.**—No. 3 (the Special Retrenchment Act of 1902) reduces from August 1, 1903, to October 1, 1904, the salaries of the Ministers of the Crown, the members of the Legislative Assembly, certain officers in Parliament, and of public servants generally, excluding the Governor, the Auditor-General, and the judges, and salaries not exceeding £100, and officers whose annual rate of pay had been reduced between July 1, 1902, and August 26, 1902. The reduction does not affect the relative position or seniority of the officer nor his scale of pension (ss. 5, 6).

**Civil Service: Pensions.**—No. 22 validates retiring allowances to certain named officers whose services were dispensed with before their attaining the prescribed age.

**Income Tax.**—No. 10, (*n*) a Statute of eighty-six sections, imposes for the first time in the history of Queensland a tax on incomes. It differs from the Imperial Acts in several very important particulars.

All males of full age are liable to the tax, and to pay a minimum annual sum of 10s. Women, whether married or single, and males

(*m*) Under the Queensland Stock Inscription Act of 1885 (47 Vict. No. 1).

(*n*) See *infra*, pp. 526, 537, 544.



under age are not liable to the tax unless they have an aggregate income from personal exertions or property of at least £150. The tax is also leviable on all companies or bodies corporate, howsoever and under whatever law incorporated, and wherever their head office or principal place of business may be.

The exemptions (s. 12) include the revenues of local government authorities, mutual life assurance companies, religious, charitable, and educational institutions of a public character, and societies and institutions not carrying on business for profit or gain, friendly societies and trade unions. There are also exempted incomes derived as dividends from a company which has in Queensland paid a duty on such dividends and income arising or accruing from debenture stock or Treasury bills issued by the Queensland Government.

The tax is levied (s. 7) in respect of the annual amount of the incomes of all taxable persons, at the rates following:—

- (1) If the total income subject to the tax does not exceed £100, the fixed sum of 10s. (*o*)
- (2) If the total income subject to the tax exceeds £100, but does not exceed £150, the fixed sum of £1.
- (3) If the total income subject to the tax does in the aggregate exceed £150, on the first £150 of such income the fixed sum of £1 (and in estimating such £150 the income, if any, derived from the produce of property shall be first resorted to): on the balance of the total income after the first £150:—
  - (*a*) On all income “derived from personal exertion,” at the rate of sixpence in the pound.
  - (*b*) On all other income “derived from the produce of property,” at the rate of one shilling in the pound

“Income derived from personal exertion” is defined (s. 3) as

all income consisting of earnings, salaries, wages, allowances, pensions, superannuation, or retiring allowances or stipends earned in or derived from Queensland; and all income arising or accruing from any business carried on in Queensland; the income subject to tax includes income of the taxpayer although the same has not arisen or accrued, or been earned, derived, or received by or from his own personal exertion or business.

“Income derived from personal property” is defined as

all income derived in or from Queensland and not derived from personal exertion; the income subject to tax includes income of the taxpayer although the same has not been derived from his own property.

(*o*) The idea of the fixed tax seems to have been taken from the fixed death duty imposed on small estates under the Finance Act, 1894. It will work as a poll tax on the labouring classes.

Elaborate provisions are made (ss. 14-18) as to deductions, as to the valuation and taxation of quarters and allowances to employees, and of profits converted into stock-in-trade or used as capital (ss. 19-20).

Provision is made for constituting certain persons as responsible agents for persons absent from the Colony or for their employees, or for taxable companies. Particular attention is paid to the assessment of foreign companies and shipowners (ss. 31-33). The original Act proposed to treat the income of companies as derived from the produce of property and not from personal earnings, but this provision was repealed by a later Act of the Session (No. 23). The machinery created for assessment and collection is in the main an adaptation of the Imperial Acts.

**Gaming Machines.**—No. 4 increases from sixpence (*p*) to a shilling the tax levied on totalisator machines, which are only allowed to be used on racecourses. The impost is levied on every twenty shillings received or paid by the conductor of the machine.

**Aborigines' Protection.**—No. 1, passed in 1901, but reserved and assented to by Order in Council of March 6, 1902, (*q*) amends legislation of 1897 (*r*) on the same subject, and the Native Labourers' Protection Act, 1884. (*s*)

The provisions of the Act are intended to give proper control over the employment and payment of aboriginals, the protection of their women and girls, improvement in the position of half-castes, including liability of white fathers to contribute to the maintenance of their half-caste children who have become chargeable to the State. The reserves set apart for aborigines are protected from mining operations; and, *per contra*, the camps of aborigines (which have all the defects of gipsy encampments) may be removed from any neighbourhood if it be thought necessary.

**Defence.**—No. 16 amends the Defence Act of 1884 (*t*) as to exemption from ferry tolls and free conveyance by railway of persons in the defence force who are in uniform for duty.

**Dentists.**—No. 25 makes provisions for the registration of dentists qualified to practise in Queensland. It constitutes a Dental Board of seven members, at least two of whom must be medical practitioners and the rest dentists. The Board is to examine, register, and control persons qualified to practise as dentists. The scheme of the Act is in the main that of the Imperial Dentists Act, 1878. (*u*)

(*p*) The use of these machines is allowed under an Act of 1889 (53 Vict. No. 2), and the tax of 6*d.* was imposed by an Act of 1892 (56 Vict. No. 15).

(*q*) Assent proclaimed May 3, 1902.

(*r*) 61 Vict. No. 17.

(*t*) 48 Vict. No. 27.

(*s*) 48 Vict. No. 20.

(*u*) 41 & 42 Vict. c. 43.



**Fire Brigades.**—No. 21 amends the legislation of the State as to fire brigades (*x*) in certain details which seem to be mainly if not wholly consequential on the consolidation of the law as to local government. (*y*)

**Land.**—No. 18, an Act of fifty-seven sections, amends the principal Land Act of the State passed in 1897, treating it as the Land Code of the State. The amendments are too special in character and too local in interest to warrant presentation in detail. They are mainly concerned with new pastoral leases and selections for agricultural purposes.

**Local Government.**—No. 19, an Act of three hundred and ninety-nine sections and four schedules, repeals wholly or in part thirty-seven prior Acts, and consolidates and amends the law relating to local authorities, omitting that relating to public health, which was consolidated in 1900. (*z*)

Part II. deals with the areas of local government, towns, and shires.

Part III. deals with the constitution of local authorities—in towns, a council of from six to twelve elected aldermen presided over by a mayor elected from among themselves; in shires, a council of from five to nine elected councillors, who choose a chairman from among themselves—the qualification of members and voters, retirements and vacancies, and *ouster* from office.

Part IV. deals with the election of members of the councils and with the election and duties of the chairman, who may receive an allowance from the local fund.

Part VI. regulates the proceedings of the councils.

Part VII. deals with the powers and duties of the councils, which correspond closely to those of local authorities at home, but include authority to make and enforce bylaws under sixty-seven distinct heads, from advertising to wharves. The bylaws must be submitted to the Governor in Council, and do not come into force till approved and gazetted.

Part VIII. deals with buildings. The towns may be divided into first-class or “fireproof” sections and second-class sections, in which fire-resisting materials are not insisted on. Most of the building regulations, however, will depend on bylaws.

Part IX. treats of bylaws, their subject-matter and procedure for making and enforcing them.

Part X. creates a local fund to be fed by rates and other receipts from local resources and State grants.

Part XI. deals with valuation for rating. It declares what land is

(*x*) Contained in Statutes of 1881 (45 Vict. No. 10) and 1882 (46 Vict. No. 9).

(*y*) *Infra*:

(*z*) See *supra*, pp. 512, 514.

ratable, and prescribes the mode of valuation, based, as a general rule, not on annual value, but on estimated selling price (s. 195).

The lands exempted include Crown lands which are unoccupied or are used for public purposes; lands in the occupation of the Crown unless rented in a town from any person or corporation; land in the occupation of any person or corporation which is used for public purposes; land vested in or in the occupation of or held in trust for a local authority; common land not exceeding fifty acres and used exclusively for public worship, or for public worship and educational purposes, or for an orphanage or mechanics' institute, school of arts, technical school or college, school of mines, public school, or library; and land used exclusively for cemeteries.

Part XII. deals with rating powers. Where the rates are not paid the authority can distrain or take the timber, or in certain cases seize and sell the land. The liability for rates is on the owner of the land.

Part XIII. treats of accounts and of audit, which is by a public official appointed by the governor.

Part XIV. regulates loans. A plebiscite may be demanded before a loan can be authorised.

Part XV. deals with the creation of tramway areas and the provision of tramways by a local authority alone or conjointly with other.

Part XVI. deals with agricultural drainage.

Part XVII. deals with the constitution of joint authorities where required.

**Mines.**—No. 24 amends the Mines Act of 1898, (a) with the object of better facilitating the drainage of mines subject to inundation by the percolation of water accumulated underground or from other sources.

**Registration of Firms.**—No. 12 provides for the registration of firms—*i.e.* of any person individually, or any two or more persons, in association or partnership, carrying on any business or having a place of business in Queensland under any firm-name—*i.e.* a name not consisting solely of the full or usual name or names of the individual or *all* the partners or associates. It does not apply to companies registered under the Companies Acts or incorporated by any Statute of the Colony, nor to foreign companies registered under the Colonial Act of 1895.

**Friendly Societies.**—No. 15 amends the Friendly Societies Act of 1894, (b) as to the opening and use of special banking accounts by the trustees of a friendly society.

(a) 62 Vict. No. 24, *supra*, p. 499.

(b) 58 Vict. No. 17.



**Railways.**—No. 8 provides for the appointment of a Commissioner of Railways by commission under the Great Seal of the State for a term not exceeding seven years; puts under his control all moneys appropriated for the maintenance of existing and the construction of new railways; authorises him to make, and to compound for the breach of, contracts. It also limits the damages recoverable against the Commissioner in respect of personal injury and for damage to animals, or passengers' luggage, unless the value of the animals or luggage has been declared to exceed the prescribed limit of damage, and the excess insured at a scale limited by the Act, before consignment of the animals or the entry by the passenger on his journey.

**Trustees and Executors.**—No. 7 (*e*) amends the Trustees and Executors Act, 1897, (*d*) by empowering trustees with the sanction of the Court to postpone the sale or conversion of property held in trust for an infant (solely or jointly with others) and to manage the property or carry on any business connected therewith for such period during the minority of the infant as the Court may think to be for the benefit of the persons entitled. The Court may allow the trustee salary or remuneration for his pains and trouble. The provisions of the Act may be excluded by the terms of the instrument creating the trust.

## 1903 (*e*)

Acts passed—Public, 11. (*f*)

**Senatorial Elections.**—No. 6, in exercise of the powers given to the State by the Commonwealth Constitution, (*g*) fixes the places for nomination and declaration of the poll on the election of senators to the Commonwealth Parliament, and provides for the mode of fixing the dates of nomination, polling, and return, and the places for polling.

**Supreme Court.**—No. 9 provides that the number of judges in the Supreme Court shall not be less than four nor more than five (*h*) (s. 3), and as to the mode of determining who is to be the senior puisne judge of the Court (s. 2). (*i*).

**Interpretation and Edition of Statutes.**—No. 10 amends the Acts Shortening Act of 1867 by incorporating in it new clauses, based on ss. 11, 20, 26, 31, 37, and 38 of the Imperial Interpretation Act,

(*c*) See *infra*, p. 539.

(*d*) 61 Vict. No. 10.

(*e*) Contributed by W. F. Craies, Esq.

(*f*) Including two which would in the United Kingdom be classed as local or personal.

(*g*) 63 & 64 Vict. c. 12, s. 9, chap. i. s. 9.

(*h*) Under an Act of 1889 (No. 17, s. 7) the number has been fixed at five.

(*i*) Under the Act of 1889, s. 9, other provision was made as to the senior puisne judge.

1889. (*k*) It also gives short and collective titles to many Acts in force in Queensland, and amends verbal errors in the text and marginal notes of a large number of enactments. But its most important clause is the following, which makes general a practice previously prescribed in many particular Queensland Acts, and will tend to an almost automatic consolidation of the chief titles in the Statute Book:—

29. A. (1) When by any Act, whenever passed, any section or schedule or any word or words is or are directed to be inserted in or omitted from any previous Act, or any section or schedule thereof, or to be substituted for or inserted in lieu of any section or schedule, or any word or words forming part or the whole of any section or schedule of any previous Act, then in all copies of the Act so amended, printed by the Government printer, the section or schedule or word or words shall be inserted or omitted in accordance with such direction, and all necessary consequential amendments of marginal notes, headings, and divisions shall be made. And references shall be made in the margin to the section or sections of the Act by which such amendments are made :

Provided that no amendment shall merely by force of such direction have any retrospective operation.

(2) Whenever any enactment or any Act relating to the practice or procedure of the Supreme Court has been or shall hereafter be in pursuance of statutory authority on that behalf abrogated by rules of the Supreme Court, then in all copies of such Act printed by the Government printer the enactment so abrogated shall be omitted, and reference shall be made in the margin to the Rules of Court whereby such abrogation was made.

**Rabbits.**—No. 4 continues for six years the Rabbit Boards Act of 1896, and amends s. 22 of that Act as to the assessment of expenses on cattle or sheep runs held under lease or licence from the Crown.

**Local Authority.**—No. 7 amends s. 193 (iii.) of the Local Authorities Act of 1902, (*m*) as to lands to be exempted from rating. The exemption now runs :—

(iii.) Land in the occupation of any person or corporation which is used for public purposes, also land invested in or for the time being under the control of any person or corporation under or in pursuance of any Statute for the purposes of any acclimatisation society, or for the purposes of a show ground or for public recreation or athletic sports or games, or for the purposes of public charities.

**Stamps.**—No. 2 (*n*) repeals the temporary Stamp Act Amendment Act of 1901 (*o*) and provides for the insertion in the Stamp Act of 1894 (*p*) of an *ad valorem* duty on receipts for money, and penalties for evading the duty are imposed.

(*k*) 52 & 53 Vict. c. 63.

(*m*) See *supra*, pp. 522-523.

(*n*) Repealed by No. 14 of 1904; see *infra*, pp. 519, 530.

(*o*) See *supra*, p. 515.

(*p*) 53 Vict. No. 8.



**1904** (q) Acts passed—Public and General, 17; Local, 2; Personal and Private, 2.

**Retrenchment.**—No. 4 is a special Retrenchment Act providing for the reduction from October 1, 1904, to July 1, 1905, of the salaries paid out of State funds for the personal service of officers of the State, including the Ministers of the Crown and members or officers of either House of Parliament. S. 8 provides that any surplus in the State accounts shown on June 30, 1905, shall be appropriated so far as it will go in repaying to each person reduced under the Act the amount of the reduction less the income tax which he would have had to pay but for the reduction, which tax is remitted by s. 7.

**National Bank.**—No. 6 authorises the making of agreements for the more speedy repayment of sums due from the Queensland National Bank to the State, the capital of which sums under an agreement sanctioned by a Statute of 1896 would not be repayable until 1918. The scheme involves the giving of promissory notes by the bank for instalments of the debt (£1,463,000), for prohibition of all dividends till half the debt is paid off and limitation of the dividends to 3 per cent. till the rest is paid off, and for restrictions on alteration of the memorandum and articles of association of the Bank (s. 7).

**Income Tax.**—No. 9 (r) amends and continues the Income Tax Act of 1902. (s) The most important changes are the abolition of the fixed duty of 10s. levied by the Act of 1902 on all incomes, even the smallest, and the creation of a progressive income tax. S. 5 repeals ss. 7 and 8 of the Act of 1902 and enacts that an income tax should be levied, etc., on the annual amount of the incomes of all persons at the following rates:—

- (i.) If the total income subject to the tax does not in the aggregate exceed £100, exempt. (t)

Provided that such exemption shall not apply to the incomes of companies or of absentees. (u)

Provided further that where the total income subject to the tax does not in the aggregate exceed £300, and such income is derived partly from personal exertion and partly from the produce of property, in deducting the £100 exempt the income derived from personal exertion shall first be resorted to.

- (ii.) On all income derived from personal exertion : (x)

(q) Contributed by W. F. Craies, Esq.

(r) See *infra*, p. 537.

(s) See *supra*, p. 519.

(t) Under the Act of 1902, 10s. was charged on incomes up to £100.

(u) *I.e.* persons not domiciled in Australia (s. 3).

(x) *I.e.* earnings, salary, wages, allowances, pensions, superannuation, or retiring allowances earned in or derived from Queensland.

If the total income subject to the tax—

exceeds £100 and does not exceed the sum of £125, the fixed sum of 10s.

exceeds the sum of £125 and does not exceed £150, the fixed sum of £1.

[Where the income of a taxpayer does not exceed £150, sums expended by him in the maintenance or support of infirm, aged, or indigent relatives are exempt: s. 7.]

exceeds £150 and does not exceed £300, £100 exempt and 6d. in each and every £ over £100.

exceeds £300 and does not exceed £500, 6d. in each and every £1.

exceeds £500 and does not exceed £1000, 6d. in each and every £ of the first £500, and 7d. in each and every £ over £500.

exceeds £1000 and does not exceed £1500, 7d. in each and every £ of the first £1000, and 8d. in each and every £ over £1000.

exceeds £1500, 8d. in each and every £.

(iii.) On all income derived from the produce of property: (y)

If the total income subject to the tax—

exceeds £100 and does not exceed £120, the fixed sum of £1.

exceeds £120 and does not exceed £300, £100 exempt and 1s. in each and every £ over £100.

exceeds £300, 1s. in each and every £.

(iv.) On the incomes of all companies and of all absentees, on the total income subject to the tax, 1s. in each and every £.

The income tax of a company which has its head office in Queensland is to be assessed at not less than the amount of the dividends declared during the year of assessment; if any profits remain undisturbed, 6d. in the £ is payable thereon, to be allowed for against the tax payable on them when they are ultimately distributed. Special provisions are made for ascertaining the chargeable profits of companies which mine in Queensland.

The charges on companies are in lieu of the dividend duty imposed by an Act of 1890, (z) and the companies which have their head office or chief place of business in Queensland are not allowed to distribute their dividends till they have paid income tax at the rate of 5 per cent. per annum thereon (s. 12).

There are a number of minor amendments as to the mode of calculating deductions and various other details in the Act of 1902.

**Death Duties.**—No. 17, which was assented to December 17, 1904 (but took effect as from October 7, 1904), amends the law as to

(y) *I.e.* income derived in or from Queensland and not derived from personal exertion, even if not derived from the taxpayer's own property.

(z) 54 Vict. No. 10.



succession and probate duties contained in Acts of 1892 (a) and 1895. (b)

The definition of "succession" is intended so as to include dispositions made within twelve months of death and purporting to operate as immediate gifts, (c) but allowance is made for *ad valorem* stamp duties paid thereon (s. 4). Where a settlement contains a trust to take effect on the death of the settlor, the trustees, etc., must within six months of the death give to the Commissioners of Stamps notice of the settlement, of the property settled, and of its value (s. 5).

S. 7 (*inter alia*) adapts to Queensland the provisions of s. 7 (5) of the English Finance Act, 1894, (d) as to allowances for debts due to persons resident out of the State. Interest at 5 per cent. is payable on succession duty from the date of the death, or where the duty is payable in instalments, from the date when each falls due (e) (s. 8). Personalty comprised in a succession is valued as if it were a legacy by the predecessor to the successor (s. 12). Probates, etc., are not to have issue till succession duty is paid or secured (s. 10). On the issue of probate or administration in Queensland, succession duty is chargeable although the testator or intestate was not domiciled in Queensland. (f) And it has been found necessary to make further provision to secure the duties on shares entered on the branch registers out of Queensland of companies registered under the Queensland Companies Acts, by requiring from the company's returns showing the date of the member's death and the nature and extent of his interest, and by requiring the company to pay the duty, with a consequent charge on the interest in question (s. 9).

S. 11 provides for the payment of succession duty in respect of shares held in "foreign" companies which carry on in Queensland the business of mining, pastoral or agricultural production, or timber getting. The companies must have a registered office in Queensland, must make returns as to the interests of deceased members, must pay the succession duty thereon subject to a charge in their favour on the interests for the duty paid, and if they do not pay can be treated as debtors to the Crown for the amount of the duty.

When any application is made to register interests in land subject to succession duty, the Registrar of Land Titles is to make on the register an entry, "Succession duty not paid," unless a certificate of payment is produced to him. This does not apply to mortgages (s. 13).

(a) 56 Vict. No. 13.

(b) 59 Vict. No. 28.

(c) See the Imperial Acts of 1881 (44 & 45 Vict. c. 12, s. 39) and 1889 (52 Vict. c. 7 s. 11 [1]).

(d) 57 & 58 Vict. c. 30.

(e) See English Finance Act, 1896 (59 & 60 Vict. c. 23, s. 18).

(f) 59 Vict. No. 10, s. 2.

The Act of 1892 is repealed as to regulations and new provisions are made as to regulations as to officials, notices, forms, procedure, and penalties; and it is provided that in all Crown proceedings averments are to be treated as *primâ facie* evidence of the fact until the contrary is proved in the following cases:—

- (1) That any person executed any instrument.
- (2) That any assessment or re-assessment has been duly made.
- (3) That any requisite prescribed or satisfactory accounts, returns, or particulars have or have not been made or given; or
- (4) That any duty has or has not been paid (s. 15).

The scale of probate duties established in 1892 (g) is repealed, and the following scale substituted:—

|  | £ | s. | d.   |
|--|---|----|------|
| When an order to administer the goods or lands has been granted to the Curator of Intestate Estates and administration duty has been paid by him:<br>Upon any subsequent grant . . . . . |   |    | nil. |
| When a grant of probate has been made to one or more executors, with leave to another executor or other executors to come in and apply: upon any such subsequent grant . . . . .         |   |    | nil. |
| Any grant <i>de bonis non</i> when duty on the original grant has been paid in Queensland . . . . .  |   |    | nil. |
| When the net value of the property of the deceased person in respect of which the grant of probate or letters of administration is made does not amount to £300 . . . . .                |   |    | nil. |
| When such value amounts to £300 or upwards, for every £100 or part thereof . . . . .   | 1 | 0  | 0    |

*Note.*—For probate and administration purposes, in estimating the net value of the property of the deceased person, there shall be included any accumulation of interest and any dividends, rents or other increments paid or accrued since the death of the deceased person and the date of application for the grant; for probate purposes no deduction shall be allowed on account of any debt secured by mortgage upon real property.

**Stamps.**—No. 14 amends the Stamp Laws in certain details.

S. 2 imposes penalties on persons who on transfer of a share of interest in any company registered under the Queensland Companies Acts or otherwise incorporated fail to give notice in a form prescribed. The object is to ensure payment of the stamp duty.

S. 3 deals with the mode of taking payment for documents required to be registered with clerks of petty sessions, mining wardens, or mining registrars.

(g) Printed in Norman's "Death Duties," 2nd ed., p. 392.



S. 4 repeals the Stamp Act of 1903 (*h*) and establishes a new scale of *ad valorem* stamp duties on receipts for money, and penalties for evading the duty.

S. 5 modifies the provision of the Stamp Act of 1894 (*i*) as to stamp duty on conveyances by imposing on the mortgagee stamp duty on conveyance or transfer of the mortgaged property from mortgagor to mortgagee, subject to a rebate to the amount of the mortgage duty paid in respect of the mortgage under ss. 65-69 of the Act of 1894.

**Execution and Distress.**—No. 15 exempts from distress for rent any one sewing machine, typewriting machine, or mangle owned by or hired to a female (s. 1), and also exempts from distress for rent, or execution by process issuing out of any Court against any householder the tools, necessary furniture, books for the education of the children, wearing apparel, and bedding of the householder, his wife and children to a value (inclusive of all but the children's books) not exceeding £10. The term "householder" includes occupier of the whole or part of any messuage or of apartments furnished or unfurnished therein (ss. 3, 4). Where such goods are levied on, the householder must deliver a schedule of the goods claimed to be exempt, but even if he does not the bailiff must still exempt goods of the kind and to the amount above stated (s. 5).

**Agricultural Farms.**—No. 12 extends the operation of the special Agricultural Homesteads Act of 1901 (*k*) so as to authorise the selection under the latter Act of Agricultural Farms (not exceeding 640 acres) in the same manner as homesteads.

**Dairy Produce.**(*l*)—No. 18 provides for the registration and inspection of dairies and other premises where dairy produce is prepared and manufactured for sale, and regulates the manufacture, sale, and export of dairy produce—*i.e.* milk and cream, butter, cheese, condensed milk, and any other produce of milk or cream (s. 2).

It is made unlawful to employ in a registered dairy or factory persons not of European or aboriginal Australian descent, unless they can read and write from dictation words in the English language (s. 30).

No. 11 provides for the repayment to persons taxed for purposes of the Meat and Dairy Produce Encouragement Acts, 1893 to 1901, of sums collected but not required for the purpose of making advances under those Acts.

**Intoxicating Liquors.**—Two Acts deal with the law relating to the sale of intoxicants. No. 10 deals with the registration of clubs, which

(*h*) See *supra*, p. 515.

(*k*) See *supra*, p. 517.

(*i*) 59 Vict. No. 8.

(*l*) See *supra*, p. 517. See also *infra*, p. 535.

had already been to some extent subject to the licensing laws.<sup>(n)</sup> The new Statute is framed on the lines of the provisions as to clubs in the English Licensing Act, 1902, <sup>(o)</sup> and the Licensing (Scotland) Act, 1903, <sup>(p)</sup> but is considerably more elaborate. No. 5 amends the former law <sup>(q)</sup> as to registration of premises of spirit merchants by referring all their applications for registration to the Home Secretary for allowance or rejection.

**Bank Holidays.**—No. 8 <sup>(r)</sup>, repeals the Bank Holidays Act of 1877 <sup>(s)</sup>. Both the repealed and the repealing Act closely follow the model of the Imperial Act of 1871, <sup>(t)</sup> but that of 1904 contains a section (10) allowing any bank to close the head office or any branch on giving a public notice in the manner prescribed. The statutory bank holidays created are fourteen in number.

**Land Banks.**—No. 13 amends the Agricultural Bank Act of 1901 <sup>(u)</sup> by extending the purposes for which advances may be made—

- <sup>(a)</sup> to payment of liabilities already existing on the holding;
- <sup>(b)</sup> to agricultural, dairying, grazing, horticultural, or viticultural pursuits thereon;
- <sup>(c)</sup> to adding to the improvements already made thereon; and
- <sup>(d)</sup> to purchase of stock, machinery, or implements.

Advances are limited in cases <sup>(a)</sup> and <sup>(d)</sup> to 10s. in the £ on the fair estimated value of the holding, and in other cases to 12s. in the £ on such value. Advances may not be made to "aboriginal natives of Asia, Africa, or the Pacific Islands" <sup>(s. 3)</sup>.

The Act also extends the operation of the principal Act to miners' homestead leases (ss. 9, 13), provides for the acquisition of the freehold of lands on which advances are made <sup>(s. 8)</sup>, and makes further provisions as to interest, time of repayment, and perfecting the securities held on acquisition of the freehold by the borrower.

**1905** <sup>(x)</sup> Acts passed—Public, 34; Personal or Local, 2.

**Governor's Salary.**—No. 3 reduces the salary of the Governor as from the then next appointment to £3000 a year, <sup>(y)</sup> and the salary of the Governor's private secretary from £400 to £300 per annum.

<sup>(n)</sup> See the Liquor Act of 1886 (50 Vict. No. 30), s. 18.

<sup>(o)</sup> 2 Ed. VII. c. 28, see *supra*, pp. 96–97.

<sup>(p)</sup> 3 Ed. VII. c. 25, s. 80, see *supra*, pp. 111–113.

<sup>(q)</sup> Contained in s. 7 of the Liquor Act of 1886.

<sup>(r)</sup> See *infra*, p. 538.

<sup>(s)</sup> 14 Vict. No. 13.

<sup>(t)</sup> 34 & 35 Vict. c. 17.

<sup>(u)</sup> 1 Ed. VII. No. 24. See *supra*, p. 516; and see also *infra*, p. 534.

<sup>(x)</sup> Contributed by W. F. Craies, Esq.

<sup>(y)</sup> Under the Constitution Act of 1867 the salary was £4000; under the Amending Act of 1874 (38 Vict. No. 16) it was raised to £5000.



**Parliamentary Elections.**—No. 1 amends the Elections Acts, 1885 to 1898, (z) which are already printed and treated as a Consolidated Act. The amendments made are effected by repeal and substitution on the plan adopted in amending the Imperial Army Act of 1881. (a)

The principal changes in the law consist in the grant of the suffrage to all persons not under twenty-one years of age, whether male or female, whether married or unmarried, provided that they—

- (1) have resided for twelve months continuously in the State ;
- (2) are natural-born or naturalised subjects of the King — *i.e.* naturalised in the United Kingdom or within the meaning of the Commonwealth Naturalisation Act of 1903 ; (b)
- (3) are entered on the electoral roll for an electoral district of the State.

The rule as to elections is one adult one vote (s. 9 [3]), but provision is made for allowing an elector to vote in a district in which he holds freeholds or leaseholds of a certain value instead of in the district in which he resides.

There are numerous disqualifications, such as lunacy, habitual drunkenness, and many crimes and offences. Aboriginal natives of Australia, Asia, Africa, and the Pacific Islands may not be placed on an electoral roll (c) (s. 9 [1]).

**Bills of Exchange.**—No. 7 amends ss. 61 and 83 of the Bills of Exchange Act, 1884. (d)

S. 2 protects bankers who in good faith and without negligence pay a bill or note payable at their bank which has been so drawn, accepted, or made by a customer as to afford facility for fraudulent alteration in the amount, and has been fraudulently altered. The section extends to orders or demands by one branch on another in Australasia. (e)

S. 3 protects bankers who in good faith and without negligence receive payment for a customer of a bill or note to which he has no title. (f) In the case of a cheque the bank is protected even when it has credited the proceeds before collection. (g)

**Harbour Dues.**—No. 32 (g<sup>1</sup>) repeals the provisions of a series of prior

(z) See *supra*, p. 496.

(a) 44 & 45 Vict. c. 58.

(b) See *supra*, pp. 424–425.

(c) The expression “aboriginal native” is well established as to the black aborigines of Australia; but it will be somewhat difficult to apply it to Christians from Smyrna or Egypt, and to inhabitants of Japan, China, or India.

(d) 48 Vict. No. 10; a transcript of the Imperial Act of 1882 (45 & 46 Vict. c. 61).

(e) Passed in consequence of the decision of the High Court of Australia in *Colonial Bank of Australasia v. Marshall*, 29 V. L. R. 804, affirmed [1906] A.C. 559, and see *Scholefield v. Lord Londesborough*, [1896] A.C. 514.

(f) Passed in consequence of *Gordon v. London City and Midland Bank*, [1903] A.C. 240.

(g) See *Akrokerri (Atlantic) Mines, Ltd. v. Economic Bank*, [1904] 2 K.B. 465.

(g<sup>1</sup>) See *infra*, p. 542.

statutes authorising the levy of differential harbour dues in favour of goods from other Queensland ports.

**Infant Life Protection.**—No. 19 is intended to make better provisions for the protection of infant life. It is avowedly based on the model of similar legislation in Victoria (*h*) and South Australia. (*i*)

Infants under three may not for reward be received or adopted unless the place of receipt or adoption is registered as a nursing home (s. 6). This does not apply to the case of relatives or guardians or to orphanages (s. 5). Nursing homes are registered and inspected. Adoption of a child under three must be registered (s. 15). Provision is made requiring notice by the occupier of a house where an illegitimate child is born to the registrar of births of the fact of birth, and a like duty as to notifying death is imposed in the case of illegitimate children under five (s. 17). The remedies of the mother against the father of a bastard are extended so as to include confinement expenses (s. 16).

**Criminals.**—No. 24 is intended to prevent the influx of criminals and to prevent certain criminals from remaining in or returning to the State. It is in substance a transcript of the New South Wales Act of 1903. (*k*)

**Firearms.**—No. 29 imposes penalties on the sale to or use by persons under fourteen of any firearm. The Act operates only in districts fixed by gazetted notification of the Governor in Council.

**Hawkers and Pedlars.**—No. 5 amends the existing legislation of the Colony (*l*) as to hawkers and pedlars by requiring police magistrates or justices in petty sessions to refer to the Home Secretary applications made to them for licences with a report and recommendation, in cases where they are in favour of the grant of a licence.

**Census.**—No. 6 authorises the omission of the taking in 1906 of the census, which would otherwise have been taken under the Quinquennial Census Act of 1875. (*m*)

**Legal Profession.**—No. 10 permits women to become barristers, solicitors, and conveyancers in like manner and subject to the same conditions as men, and on admission with the same rights and privileges and the same obligations as men, and allows women to be articled to solicitors.

**Juvenile Smoking.**—No. 12 prohibits the sale, gift, or supply of tobacco to a person under sixteen, and the use of tobacco in any form in any public place or conveyance by a person under sixteen. In the

(*h*) 1890, No. 1198.

(*i*) 1898, No. 702.

(*k*) See *supra*, pp. 474–475.

(*l*) That law is contained in two Acts of 1849 N.S.W. (13 Vict. No. 36) and 1869 (33 Vict. No. 11).

(*m*) 39 Vict. No. 2.



case of the latter offence the offender's term of imprisonment may not exceed twenty-four hours.

**Railways.**—No. 13 creates a board for hearing appeals from the Railway Commissioners by employees on the State railways. The board is to consist of five members—three chief officers of the State railways and a police magistrate and an employee of the State railways elected by ballot of the other employees and approved by the Governor in Council.

**Agricultural Holdings.**—No. 11 provides for the compensation of tenants of agricultural holdings for improvements made by them during their tenancy. The Act is framed by reference to the English Agricultural Holdings Acts of 1895 (*n*) and 1900, (*o*) but includes provisions adapted from the South Australia Act, 1891, No. 521. The holdings to which the Act applies must be at least five acres and include land suitable for dairying and for orchards or plantations of bananas, pineapples, or sugar-cane.

**Agricultural Selections.**—No. 20 is intended to provide means of assisting settlement upon agricultural lands in Queensland, by authorising the Secretary for Agriculture to give as a loan in money or kind help to members of bodies of selectors of agricultural homesteads under the Special Agricultural Selections Act of 1901. (*p*) The aid is limited to rent and necessities for a limited period, tools, stock, and cost of preparing the land and of receiving instruction in farming and dairying.

**Marsupials and Dingoes.**—No. 8 reproduces in a permanent form the substance of prior and temporary legislation (*q*) for the destruction of marsupials, dingoes and other wild dogs. The State may be divided into districts or special districts, each having a Marsupial Board of five, one appointed by the Governor in Council, the others elected from and by resident owners of holdings on which a prescribed amount of cattle or sheep has been returned to exist. The Board grants the necessary permits to scalpers of the animals to be destroyed and for payment for the scalps, and levies assessments on owners of cattle and sheep to defray the expenses of scalping.

**Rabbits.**—No. 25 amends the Rabbit Board Act, 1896, in details as to the qualification of electors, the assessment for expenses, and the duties of owners with reference to fencing against rabbits, and to their destruction.

**Agricultural Bank.**—No. 15 amends the Agricultural Bank Act, 1901 (*r*) and 1904, (*s*) and particularly—

(*n*) 58 & 59 Vict. c. 27.

(*p*) 1 Ed. VII. No. 23, see *supra*, p. 517.

(*r*) See *supra*, p. 516.

(*o*) 63 & 64 Vict. c. 50.

(*q*) See *supra*, pp. 500, 517.

(*s*) See *supra*, p. 531.

- (1) by forbidding advances to aliens (s. 2);
- (2) by providing for new leases of grazing farms or grazing homesteads for a term sufficient to secure repayment of advances made (s. 4).

**Brands.**—No. 17 amends the Brands Act, 1898, (t) by making the fact that a registered device or symbol is duly branded on cattle *prima facie* evidence that they belong to the registered owner of the device or symbol.

**Fertilisers.**—No. 16 regulates the sale of fertilisers, and makes provision for their analysis by public authority, and prescribes the proportions of nitrogen, phosphoric acid, or potash necessary to make sale lawful. Dealers in fertilisers are obliged to give notice to the Minister of Agriculture of the brands in which they deal and to certify the ingredients, and to give to buyers an invoice certificate as to the ingredients, which shall be deemed a representation or warranty by seller to buyer of the truth of the matters stated therein (s. 6).

**Dairy Produce.**—No. 33 amends the Dairy Produce Act of 1904, (u) by authorising the establishment of a minimum standard of butter-fat in cream, and prohibiting the sale of cream below the standard or the purchase of such cream by a butter factory.

**Lands.**—No. 28, an Act of forty-four sections, amends the Land Act, 1897, and the Agricultural Lands Purchase Acts, 1894 to 1901. (x)

It restricts the rights of aliens to acquire land by requiring as a condition precedent ability to read and to write from dictation words in a language prescribed by the Minister of Lands, and by forfeiting interests in land acquired by aliens if they do not within three years become naturalised (s. 3).

It also provides for setting apart lands for selection in the United Kingdom by applicants there, and for facilitating the voyage to Queensland of selectors taking up such lands (s. 8).

Provisions are made for postponing and reducing payment of rent and purchase instalments, doubtless due to the effect of the years of drought.

The remaining details are of mainly local concern, and to set them forth would involve reference to the whole land system of Queensland.

**Local Rates.**—No. 31 validates certain sales of land by local authorities for unpaid rates, with a saving as to proceedings pending or completed. (y)

(t) See *supra*, p. 499.

(x) See *supra*, p. 517.

(u) See *supra*, p. 530.

(y) This Act was passed in consequence of a decision of the Supreme Court *In re Church's Caveat*, 1902, Queensland State Reports 201, that publication of the notification required by the Act of 1902 was a condition precedent to the validity of a sale for arrears of rates.



**Shearers and Sugar-workers.**—No. 9 (z) requires the employers of shearers and sugar-workers to provide accommodation proper and sufficient for their comfort and health. The nature of the accommodation is prescribed, and the employees are put under obligations as to keeping their quarters clean, etc. Provision is made for inspection and for making the employers comply with their obligations.

**Workers' Compensation.**—No. 26 amends the law with respect to compensation to workers for accidental injuries suffered in the course of their employment (s. 3).

The Act applies only to employment by an employer on, in, or about—

- (1) any industrial, commercial, manufacturing, or building work carried on by or on behalf of the employer as part of his trade or business; or
- (2) any agricultural, horticultural, or pastoral work carried on by or on behalf of the employer as part of his trade or business; or
- (3) any mining, quarrying, engineering, or hazardous work carried on by or on behalf of the employer as part of his trade or business or *as an investment with a view to profit*; or
- (4) any work carried on by or on behalf of the Government of Queensland, or by any local authority as the employer, if the work would in the case of a private employer be an employment to which this Act applies.

The definition of "worker" includes "employments on ships or vessels in any waters within Queensland or the jurisdiction thereof" (s. 2).

Compensation is not payable for accidents occurring on the way to or from work, or directly attributable to serious and wilful misconduct of the worker, or unless the accident disables the worker for at least two weeks from earning full wages at the work on which he was employed (s. 4). The scale of compensation is determined by the schedule, with a maximum of £400. The amount is determined by a police magistrate, subject to appeal on points of law. The provisions of the Act do not supersede the rights of the injured person at common law, or under the Employers' Liability or Factory Acts of the State (s. 6); and provision is made as to cases where the injury was caused by a stranger (s. 8), and as to sub-contractors and for the case of the insolvency of the employer (s. 11). Deductions from wages in respect of employers' liability are forbidden (s. 14), but the Governor in Council may sanction schemes of compensation in substitution for the provisions of the Act (s. 12).

(z) See *infra*, p. 540.

1906(a) Acts passed—Public, 34; Local or Personal, 1. (b)

**Income Tax.**—No. 11 amends the Income Tax Acts of 1902(c) and 1904. (d)

S. 2 establishes the calendar year as the year of assessment.

S. 4 abolishes the exemption of incomes not exceeding £100 given in 1904, and the fixed duties on earned incomes not exceeding £150, and the graduated duty on incomes between £150 and £500. Instead thereof, it imposes a duty at 6*d.* on annual incomes up to £500, leaving the graduation of 1904 on incomes over £500. The duty on incomes derived from the produce of property is fixed at 1*s.* in the £. By s. 4 (iii.) exemption is given to persons, not being companies or absentees, whose total income from whatever source does not amount to £160.

S. 6 makes all money received as or by way of royalty taxable as part of the income derived by the recipient from the produce of property. (e)

S. 7 amends s. 32 of the Act of 1902, as amended by s. 13 of the Act of 1904, and deals with the taxation of persons absent from the State. The amendments seem intended to widen the definition of taxable incomes accruing from a business in Queensland, so as to include certain cases in which the contracts relating to it are made elsewhere.

S. 9 imposes on the personal representatives of a person dying before the date prescribed for making returns, the obligation of making the returns, and imposes the tax on the estate of the deceased as if he had lived to be taxed.

S. 3 defines "dividend" as all sums of money paid, allocated, distributed, or credited by a company to or amongst its shareholders as such, by whatever name called.

"The term does not include (1) refundment on creation of capital where such refundment is only made in respect of call-money on shares actually paid by the shareholders; or (2) such portion of liquidation dividends as does not exceed the amount of call-money or shares actually paid by the shareholders."

**Succession Duty.**—No. 13 exempts from probate duty and succession duty property which, under any past or future disposition, becomes

(a) Contributed by W. F. Craies, Esq.

(b) In the annual volume of the Queensland Statutes the Act of 1906 (6 Ed. VII.) are not printed in their numerical order, but are arranged alphabetically under their appropriate titles, on the plan of Chitty's "Statutes." Several Acts which in the United Kingdom would be treated as local and personal, or private, are numbered consecutively with the general Acts; but are separately classified in the annual volume.

(c) 2 Ed. VII. No. 10, *supra*, pp. 519, 521.

(d) 4 Ed. VII. No. 9, *supra*, p. 526.

(e) Cf. The Imperial Act, 7 Ed. VII. c. 13, s. 25.



subject to a trust for a charitable or educational institution in Queensland, or for such other institution as the Governor in Council may from time to time by order determine.

**Reduction of Debt.**—No. 9, which amends the Audit Act, 1895, (*f*) directs that the money standing to the credit of the National Debt Redemption Fund shall be applied in discharging Treasury bills issued and sold in aid of the State revenue, in redeeming and cancelling unsold Treasury bills authorised to be issued, or in the purchase and redemption, at the current market price, of Queensland Government Debentures or Inscribed Stock issued under Loan Acts, and in paying the commission, costs, and expenses incurred in effecting such purchase.

**Animals.**—No. 5 creates a close time for native bears and opossums (ss. 2, 3, 4), and prohibits the use of poison for destroying opossums (s. 6). This Act also prohibits the wilful killing or injuring at any time of the wombat, tree kangaroo, flying squirrel, platypus, and echidna. All the animals except the opossum are further identified by their scientific names. The penalties of the Act do not extend to black fellows killing the animals for their own food, to killing for *bonâ fide* protection of orchards or crops, nor to authorised collectors of specimens for museums, or scientific institutions, or for scientific investigation (s. 9).

**Bank Holidays.**—No. 12 amends the Bank Holiday Act of 1904: (*g*)

- (*a*) By substituting notifications by the Home Secretary for proclamations by the Governor in Council;
- (*b*) By striking out May 24th, the birthday of Queen Victoria (Empire Day);
- (*c*) By giving the Home Secretary power to alter the day appointed for a bank holiday by a notification, which may be limited in operation both as to time and place (s. 3).

**Explosives.**—No. 21 is the first legislation passed in the State to deal with the manufacture, storage, and examination of explosives.

No explosive may be made except in a licensed factory, or kept except in such factory or in a public magazine appointed, or a private magazine licensed, under the Act, or in places subject to the control of the Customs or approved under some other Statute.

The Secretary for Mines may direct the destruction, reconditioning, or other disposal of explosives which he considers dangerous to the public safety, and large powers are given to the Governor in Council (subject to the disapproval of either House) to regulate or prohibit importation, packing, carriage, and sale, and generally to provide for the interests of public safety.

(*f*) 59 Vict. No. 13, s. 6.

(*g*) See *supra*, p. 531.

**Easement of Light.**—No. 3 declares that from and after March 1, 1907, no right to the access or use of light for any building shall be deemed to exist or be capable of coming into existence by reason only of the enjoyment of such access for any period or of any presumption of lost grant based upon such enjoyment. It is a transcript of the New South Wales Act of 1904, No. 16. (*h*)

**Executors and Trustees.**—No. 34 amends the Trustees and Executors Acts of 1897, (*i*) 1898, (*k*) and 1902. (*l*) The amendments are adapted from legislation of S. Australia, W. Australia, and New Zealand, and extend the powers of investment (s. 2), give powers of delegation of power of attorney to trustees residing out of Queensland (ss. 4, 5), and make provision as to payments out of the trust banking account (s. 6).

**Intestacy.**—No. 24 (*l*<sup>1</sup>) directs the distribution of the estate, both real and personal, of a married woman who dies intestate, between her husband and her children and next-of-kin in the same manner as the real and personal estate of a married man who dies intestate.

**Land.**—By No. 16 the proceeds of all future sales by auction of land under Part VI. of the Land Act, 1897, (*m*) are to be paid in to the Loan Fund Account and applied in defraying the cost of works directed by Parliament to be executed out of money standing to the credit of that account.

Two Acts, one general the other special, deal with the acquisition of land for closer settlement.

The subject has already been dealt with by a series of Acts from 1894 to 1901, which are repealed and re-enacted with modifications, in the Act of 1906, No. 32, which forms a kind of code on the subject.

Power is given to the State to acquire, by agreement or compulsorily, private land in Queensland for closer settlement. This is termed resumption; and the land so acquired reverts to the position of unalienated Crown land (s. 4). The land is paid for in cash or by debentures issued under the Act.

Before acquiring the land, inspection and report and valuation are to be made by a member of the Land Court (ss. 8, 9). The price, on acquiring by agreement, may not exceed by 10 per cent. the valuation of the Land Court.

The compulsory powers cannot be exercised unless the land exceeds £20,000 in value, exclusive of improvements, the legislation being framed with the idea of breaking up large pastoral areas for the purposes of agricultural settlement.

(*h*) See *supra*, pp. 480–481.

(*k*) 69 Vict. No. 8; see *supra*, p. 499.

(*l*<sup>1</sup>) See *supra*, p. 498.

(*i*) 61 Vict. No. 10.

(*l*) 2 Ed. VII. No. 7; see *supra*, p. 524.

(*m*) 61 Vict. No. 25.



The procedure for compulsory taking is prescribed, and the assessment of compensation is made by the Land Appeal Court, finally and without appeal, on a basis including the value of the land, as at the date of the requisition for the land, including improvements, and buildings and any loss of business or stock (cattle, etc.) consequent on the resumption (s. 20).

The land acquired is disposed of as follows :—

- (1) By setting apart as much as seems necessary for roads, public reserves, or townships ;
- (2) By proclaiming the rest is open for selection as agricultural farms under the Land Act, 1897 ;<sup>(n)</sup>
- (3) If the land so proclaimed has not been selected as above, after the offer has been open for at least twelve months, by offering it for unconditional selection.

The minimum aggregate purchase-price is fixed by adding 10 per cent. to the price paid in cash or debentures (s. 29).

Where improvements on land are sold, with or without the land, on special terms, the amount is deducted from the purchase-price as above fixed (s. 34).

On selection the selector obtains a lease for twenty-five years, subject to certain conditions as to fencing and improvements (ss. 32, 35).

The selector pays, under the name of rent, annual sums in accordance with a scheduled scale representing instalments on the purchase-money without rent. He may, after five years, acquire the fee simple (s. 33).

No. 26 confirms agreements for the purchase of certain lands for closer settlement.

**Lands Clauses.**—No. 14 deals with the resumption of land for public works.

These works are fully and alphabetically enumerated, and range from abattoirs to wharves. They do not include railways nor the resumption of lands for closer settlement, but the Railways Acts are amended so as to fit in with the scheme of the new Act.

The Act produces the effect of the Imperial Land Clauses Acts, but is framed on the model of the New Zealand Act of 1894, No. 42, with clauses taken from the Commonwealth Act of 1901. (o)

**Master and Servant.**—No. 31 amends the Shearers' and Sugar Workers' Accommodation Act of 1905 (p) by adding provisions for temporary accommodation for sugar workers, to be provided by the owners of sugar plantations or contractors for doing sugar work thereon,

(n) 61 Vict. No. 25.

(o) See *supra*, pp. 410-412.

(p) 5 Ed. VII. No. 9, *supra*, p. 536.

and as to temporary accommodation for sheep shearers in certain cases.

No. 30. The Contractors' and Workmen's Lien Act applies not only to ordinary contracts, but also to the Crown, the Railway Commissioner, and the Education Minister, and to all bodies undertaking performance of work for a public purpose.

The scheme of the Act is to give contractors and workmen who have done work on land or buildings, or made permanent improvements thereon, a lien on the interest of the employer in the land for the contract price or wages (s. 1).

A workman's lien is on the land on which the work is done, but he may also get a charge on the money payable to the contractor who employs him (ss. 4, 6). It is limited to the amount payable by the employer or a contractor, not exceeding thirty days' earnings (s. 4 (ii. iv.)).

The contractor's lien is on the interest of his employer on the land for the amount for the time being due to him from the employer (s. 4 (i.)).

Neither to contractor nor workman is the employer, except in case of fraud, liable in excess of the contract price (s. 4 (iii.)).

Provision is made for giving notice of claims of lien on land, or charges on contract monies, on receipt whereof the person notified becomes a stake-holder pending enforcement of the lien, in accordance with the prescribed procedure in a Small Debt Court, or District Court, or the Supreme Court (ss. 12-26).

Liens are not enforceable against the land unless registered (s. 27). When registered they are postponed to prior registered mortgages on the land, unless the mortgagee is a party or has assented in writing to the contract out of which the lien has arisen. In the latter case the mortgagee, on paying out the lien, can add the amount to his security (s. 7).

As between contractors and workmen, the workman's liens and charges take priority (s. 8).

**Mines.**—No. 10 authorises the Mines Department to make advances to persons or companies, for the purpose of providing machinery and plant for mining and treating metalliferous ores.

The advances are not to be made except on a report from the Government geologist that the mining operations in connection with which the plant is to be used are likely to be remunerative, and that the plant is properly adapted to the operations.

The advances are to be made in instalments, pound for pound, against money contributed by the borrower after the agreement to lend towards the machinery and plant. The debt is to be secured by mortgages or



charges, but is recoverable only out of the property charged and not against the borrower personally (s. 8).

**Parks and Public Lands.**—A Crown grant was made in 1895 to trustees of land in S. Brisbane, for use as a reserve for cricket and athletic sports. The Act No. 33 contemplates the transfer of the ground to the S. Brisbane Municipal Council upon the trusts of the deed of grant: and gives the trustees powers of leasing part of the ground, for any purpose except an hotel or for horse or pony-racing, and to mortgage the ground within a prescribed limit to discharge existing liabilities. The leases and mortgages are subject to the approval of the Governor in Council.

**Ports and Harbours.**—No. 7 empowers the Governor in Council to make regulations, varying, as to harbours which have no harbour board, the statutory scale of harbour dues in force. (*q*)

No. 25 amends the Harbour Boards Acts, 1892, (*r*) by giving powers to the harbour board to protect water frontages from erosion by requiring the owners of lands not vested in the Crown which have immediate frontage on a tidal water, and are so situate as to be liable to erosion by the action of water, to execute the necessary protective works. The work is done by the owner, or, if he fails, by the board, in either case at his expense, and in the latter case the cost is a first charge on the land. The owner can discharge himself from his liability under the Statute by surrendering the land to the Crown free of incumbrances, or by surrendering the water frontage with a depth of two chains immediately behind it.

**Railways.**—No. 15 is intended to make better provision for the profitable working of State railways to be constructed after November 29, 1906. It repeals the Railways Guarantee Act of 1895, (*s*) and provides for the definition of a betterment area, *i.e.* a district which will be directly benefited by the construction of a proposed railway. The district is defined by the Railway Commissioner, but its creation may be vetoed by a two-thirds majority of a ballot of the ratepayers of the district (s. 4). On the creation of a district the ratepayers are liable to make good to the State any deficiency in the earnings of the line, if they do not cover the cost of working and interest at 3 per cent. on the cost of construction (s. 6). The sum is raised by a railway rate, to which the State Treasurer contributes out of the Consolidated Revenue as statutory occupier of vacant lands in the district (s. 15). Where the total earnings of three successive years show a surplus, the railway ceases to be under the Act. (s. 16).

(*q*) Under 57 Vict. No. 19, as amended by 5 Ed. VII. No. 32, *supra*, pp. 532-533.

(*r*) 56 Vict. No. 26.

(*s*) 59 Vict. No. 17.

The effect of the Act will be to check the ardour of electors to force their M.P. to get unremunerative State lines built for their benefit.

The principles of the Act are extended by No. 23 to a State line already constructed between Dalby and Bell.

**Schools of Arts.**—A series of three Acts give power to the trustees of certain schools of arts held under trusts created by State grants of land to raise by mortgage specified sums for improvements, or to sell the land and buy a new site for the school.

**Reformatories and Industrial Schools.**—No. 6 creates a new definition of neglected children to be dealt with under the Industrial and Reformatory Schools Act of 1866.<sup>(t)</sup> The classes of children included in the new definition are (1) children under seventeen, (2) children under fifteen, (3) children under ten. The Act applies to children under seventeen who habitually beg or wander about without settled abodes, or who are destitute and without sufficient means of subsistence, and whose relatives are drunkards, or dead, or undiscoverable, or who reside in reputed brothels, or with women known to the police to be of bad character, or who, if girls, solicit men, or behave indecently, or habitually wander or loiter without reasonable cause, in a public place, or who, having been convicted of offences punishable by imprisonment, or a less punishment, should, in the opinion of the Court, go to an industrial school.

The Act also extends to children under fifteen associated with persons convicted of vagrancy, or thrice of drunkenness, or reputed thieves, and to children under ten who between certain hours sell matches, newspapers, etc., in public places, or elsewhere than at the child's home.

Parents may also have children under seventeen sent to such schools on reasonable grounds, and on giving security for maintenance. Under the former law infant convicts could be assigned by order of the Court to persons willing to take charge of them. This procedure is abolished.

**State Forests, etc.**—No. 20 provides for the reservation by proclamation of the Governor in Council of Crown lands as State forests, or national parks (s. 1), and for the making of regulations by the Governor in Council for their management and control, and as to the conditions under which timber or forest products may be cut, removed, etc. (s. 6). The regulations must be laid before Parliament. The proclamation prevents alienation of the lands except under statutory authority: but does not affect mining laws nor prevent the grant of certain classes of leases and occupation licences. The lessees or licensees may not cut trees unless nor except as expressly authorised by the terms of the lease or licence (s. 5).

(t) 29 Vict. No. 8.



**Weights and Measures.**—No. 19 consolidates and amends the law relating to weights and measures, repealing a series of earlier statutes of N. S. W. and Queensland. (*u*) Certain of the new provisions are adapted from the Imperial Act of 1835. (*x*)

The Act establishes the standard weights and measures for the State (s. 9), and provides for making and stamping copies (s. 10) and replacing lost or damaged standards (s. 11).

Incidentally it fixes the weight of a stone at 14 standard avoirdupois lbs., excluding the 8 lbs. butcher's stone, and establishes for bran, pollard, and flour a ton of 2000 lbs. avoirdupois (s. 12), and fixes separate bushel standard weights for maize, barley, oats, etc., and forbids the sale by measure of certain cereals and seeds (s. 15). Elaborate provision is made for inspection by State and local inspectors, for checking and marking weights, and for dealing with defective and false weights by prosecution and confiscation. It does not appear whether the Crown is bound by the penal sections; but regulations may be made for periodically verifying weighing instruments in use by Government departments (s. 32 (*vi.*)).

A special clause adapted from that in the repealed Act of 1898 requires the provision of weighing machines at places for the treatment, purchase, or sale of agricultural or dairy produce, and the establishment of a check-weigher at such places, in the interests of sellers to, or buyers from, the owner, etc., of the place where such produce is dealt with (s. 22).

**1907** (*y*)            Acts passed, 6—Public, 5; Private, 1.

**Income Tax.**—No. 5 further amends the Income Tax Act of 1902. (*z*)

S. 2 fixes the calendar year as the year of assessment.

The tax on income derived from the produce of property is reduced from 1*s.* to 9*d.* (s. 3).

Exemption from tax is given to persons not being companies or absentees whose whole income, from whatever source, does not exceed £200 (s. 3). Where the income exceeds £200, £200 thereof is to be deducted as exempt from tax. In making the deduction income from personal exertion is first taken off.

SS. 4 and 5 add new provisions supplementary to s. 20 of the principal Act for assessing the value of live stock.

(*u*) Cf. 1898, 62 Vict. No. 18, *supra*, p. 500.

(*x*) 5 & 6 Wm. IV. c. 63.

(*y*) Contributed by W. F. Craies, Esq.

(*z*) See *supra*, p. 519. This Act was amended in 1906, see *supra*, p. 537. Under the Queensland system of editing Statutes the amendments are incorporated in the principal Act by the State printer.

**Poor Prisoners.**—No. 4 provides for legal aid at the expense of the State for the defence of persons committed for trial for indictable offences who have not adequate means to defend themselves if it is desirable, in the interests of justice, that they should have legal aid. Application is made at any time before the jury is sworn to a judge of the Supreme Court, or of district courts, or to a police magistrate. If satisfied that the case is one for legal aid, the judicial functionary so certifies to the Attorney-General or Minister for Justice, who may if he thinks fit thereupon cause arrangements to be made for the defence of the accused person. (*a*)

**Children's Courts.**—No. 3 establishes Children's Courts for the trial of persons under, or apparently under, the age of seventeen. The Court is a Court of Petty Sessions, held before a police magistrate sitting alone, or two justices. The sittings, where practicable, are not to be in the ordinary police-court rooms. Special times are fixed for hearing charges against children, and notice is given to the parents or guardians, and, if the Court thinks fit, to religious or to charitable organisations or public institutions interested in the care or reform of children. The public, including newspaper reporters, are excluded (s. 5). Children, on arrest, are to be admitted to bail or given into the charge of some one who will undertake to produce them, and are not to be in a lock-up or prison pending the hearing, if their safe custody can be otherwise secured (s. 4).

The Court is not bound to convict on proof of the offence, but may admonish him, and, whether the child is convicted or not, may order parents or guardians to pay costs or damages incurred by reason of the offence (s. 6).

(*a*) Cf. the Imperial Act of 1903 (3 Ed. VII. c. 38), *supra*, pp. 102-103.

END OF VOL. I.



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